Ombudsman
Fairness for all in British Columbia

1988 Annual Report

To the Legislative Assembly

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Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Long Distance
(Toll free) 800-742-6157

May 1989

The Honourable John Reynolds
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Speaker:

It is my pleasure to present the 1988 Report to the Legislative Assembly in accordance with Section 30(1) of the Ombudsman Act. This Annual Report covers the period January 1 to December 31, 1988.

As an officer of the Legislative Assembly, I would be pleased to appear and report further on these matters, at the request of the Members.

Yours sincerely,

Stephen Owen

Stephen Owen
Ombudssman

The Office of the Ombudsman

Governments exercise great power over important aspects of our lives and provide a broad array of public services. The need for government to regulate the increasingly complex activities of individuals, enterprises and institutions for the protection of all and to satisfy increasing demands for public services has, of necessity, given rise a complex administrative bureaucracy.

Traditional mechanisms for accountability through the political and judicial systems, while essential, are not sufficient in themselves to hold the public bureaucracy fully accountable to the individual in modern society. We expect, quite rightly, that government will not only treat us lawfully but fairly as well. The concept of fairness in the administrative actions of government is much broader than mere lawfulness. It addresses conduct which is oppressive, improperly discriminatory, unreasonably delayed, rude, without adequate disclosure ofimportant information or the failure to give reasons. Government has a responsibility that goes beyond making and enforcing laws, and conducting itself in accordance with those laws. Government has the responsibility to conduct its dealings with its citizens in a fair and harmonious fashion.

The concept of an Ombudsman reflects the need for a more direct accountability mechanism to deal with the massive growth of the administrative bureaucracy. From the perspective of the private citizen, an Ombudsman provides an independent, direct resource to receive, investigate and pursue solutions to complaints against agencies of government. From the government's perspective, the Ombudsman can be a valuable instrument for enhancing the relationship between itself and it's citizens and for improving its administration.

Numerous governments around the world have turned to the Swedish innovation of the Ombudsman. There are now 138 Ombudsman offices listed with the International Ombudsman Institute. The increasing number of Ombudsman's offices throughout the world testifies to the growing need for this non-partisan and accessible resource.

Generally, an Ombudsman is created by statute and appointed by (and considered an officer of) the legislature rather than the government of the day. This is important because it helps to guarantee the Ombudsman's independence from the ministries and agencies of government which must be investigated in the course of dealing with complaints. In addition, it identifies the Ombudsman's role as being an extension and specialization of the legislature's responsibility to oversee the workings of government and it extends the life of the office beyond the term of a specific government.

Who does the Ombudsman investigate?

In British Columbia, the jurisdiction of the Ombudsman's office is restricted to investigating complaints against:

☐ provincial government ministries,
☐ Crown corporations, boards, agencies, commissions, and
☐ other public institutions where the majority of the board is appointed by the provincial government or is responsible to the province.

The *Ombudsman Act*, which was passed unanimously by the legislature in 1978, also sets out the Ombudsman's authority to investigate complaints against other public institutions, but these have not yet been proclaimed by Cabinet. These include:

☐ municipalities and regional districts,
☐ public schools, colleges, universities and their boards,
☐ hospitals and hospital boards, and
☐ governing bodies of professional associations.

How can the Ombudsman help?

Typically, the powers of the Ombudsman to investigate complaints are very broad and include:

☐ the power to obtain from government authorities or private individuals or bodies any and all information relating to a complaint which is investigated under its jurisdiction. In B.C., the Ombudsman also has the power to subpoena evidence and to take evidence under oath.
☐ the authority to publish findings and conclusions relative to complaints and to make recommendations to the government authorities under his jurisdiction.

Although the Ombudsman has wide investigative powers, there is a strict duty to maintain the confidentiality of information held confidentially by government and information provided to the office on a confidential basis by complainants. This duty is of value to complainants whose only other recourse might be the courts, the media or the political process, all of which are subject to the glare of publicity.

The Ombudsman is neither the agent of government nor the advocate of every complainant or interest group that lodges a complaint. The Ombudsman investigates complaints from a neutral position, considers thoroughly the government action and the reasons behind it, and either endorses and explains the action to the complainant or, if there has been some unfairness, makes a recommendation to the government for change.

It is a fundamental strength of the office that the Ombudsman cannot order change. The recommendation process demands thorough investigation of all information and perspectives, careful analysis and reasonable recommendations. Forced change can cause resistance and embitterment. Change resulting from the weight of reason is a more powerful force because it can change the way decision-makers approach situations. This will endure to the benefit of all who find themselves in those situations in the future.

The Ombudsman does not lobby for new legislation. However, in British Columbia, the Ombudsman's office has developed and reported publicly on a series of "systems studies" to identify and recommend administrative remedies for systemic causes of recurring complaints. These may sometimes identify inherent unfairness in current legislation which the government may wish to reconsider.

The Ombudsman's office has no political role to play. Rather its job is to monitor the fair administration of the policy which has been decided through the political process.

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Highlights of the 1988 Annual Report

☐ Individual members of the public brought 14,184 concerns to the Ombudsman's office in 1988.

☐ The Ombudsman's office concluded 3,664 full investigations in 1988, of which:
- 63.42 per cent (2324) were resolved to the satisfaction of the complainant,
- 36.5 per cent (1337) were found to be not substantiated, and
- .08 per cent (3) were substantiated upon investigation but remained unrectified and unresolved.

☐ An Ombudsman investigation into the licensing of the Knight Street Pub found errors in the approval process and unfairness in the application of the policies and practices of the Liquor Control and Licensing Branch. The investigation also found there was a basis for criminal charges in the referendum process. The Ombudsman's public report made recommendations regarding branch practices and the development of standard procedures to review referendum documents. (Page 12 and 65)

☐ Following a public report on the workers' compensation system in British Columbia issued by the Ombudsman in 1987, the Minister of Labour convened a committee of labour, management, government and WCB representatives in April 1988 to study and make proposals on issues facing the system. This committee made a unanimous report to the minister in October 1988. (Page13)

☐ Systems for dealing internally with public complaints were setup or enhanced by two Crown corporations in 1988. On the recommendation of theOmbudsman, B.C. Hydro established a system of regional reviewers to deal internally with collections complaints and a manager of customer services toact as liaison on Ombudsman complaints. ICBC accepted an Ombudsman suggestion to assign an additional staff member to Ombudsman enquiries and its public enquiries department will attempt to identify the systemic sources of administrative unfairness within the corporation. (Page 14 and 113)

☐ An Ombudsman investigation into the process of issuing and appealing against permits to use pesticides resulted in a public report issued in March 1988 which included 11 recommendations. The Minister of Environment subsequently agreed with 10 of the recommendations and indicated action would be taken on them. (Page 15)

☐ An Ombudsman investigation into covert surveillance of individuals and groups thought to be organizing a free-standing abortion clinic found that there was inadequate government control over the actions of contracted private lawyers and the investigators they hired. The report made anumber of recommendations regarding covert practices, accountability of contractors, and standards and training for private investigators. (Page15)

☐ A review prompted by allegations of attempts to interfere politically in the functioning of the B.C. Parole Board demonstrated the needfor the province to have its own *Parole Act* to underscore the board's autonomy and ensure appointments reflect the concerns of the wider community.(Page 16)

☐ After an investigation into the complaint process against municipal police forces as it related to the Fullerton/Matsqui Police incident, the Ombudsman's public report recommended to Cabinet that the Police Commission be given authority to hold a public hearing at the earliest possible date and the recommendation was accepted. (Page 17)

☐ The Deputy Ombudsman for Children and Youth completed his first year during 1988, a year which focused on issues involving child abuse, children's rights, foster parenting, accessibility to services and the Inter-Ministerial Children's Committee. Concerns expressed to the Deputy Ministers' Committee on Social Services resulted in establishment of an interministry task force to ensure coordination of child, family and youth services. (Page 20)

☐ The Ombudsman's office developed a consensual dispute resolution model as an alternative to litigation for resolving disputes that involve the public interest, a model that recognizes individual objectives can be achieved in a creative process that can benefit all apparently competing interests.(Page 28)

☐ Using aquaculture as a case study, the Ombudsman's office identified integrated resource management principles which have application inland use issues throughout the province. (Page 30)

☐ In investigating the case of a blasting foreman having his certificate suspended after a blasting accident, the Ombudsman recommended that the lack of appeal procedure for such a decision be rectified. The *Mines Act* is to be amended accordingly. (Page 47)

☐ A man who provided services to the government and agreed to bill another private firm to offset money it owed the government was left out inthe cold when the firm declared bankruptcy. An Ombudsman investigation helped convince the ministry involved that it was responsible to pay the man. (Page55)

☐ After extensive correspondence with the Ombudsman's office over several years, the Forensic Psychiatric Institute established a policy in 1988 allowing patients access to the information in their clinical records. (Page63)

☐ A man who simply wanted a receipt from a government ministry for $650 he had paid ended up getting his money back because it turned out he had been charged in error. (Page 44)

☐ Two cases point up the problems that can arise when someone has given your name to police after being stopped and issued a summons on a traffic offence. It is not as easy to undo the damage of impersonation as it would first seem. (Page 94)

☐ Following discussions with this office, the Motor Vehicle Branch reviewed its policy with regard to proof of identity for obtaining drivers' licences and issued a policy directive that Canadian passports would henceforth be accepted as a primary proof of the identity for licence applicants.(Page 95)

☐ The Corrections Branch changed its methods of supervising a person detained under the *Health Act* following an Ombudsman investigation of a case where a man with communicable tuberculosis was forcibly detained in shackles. (Page 99).

☐ Inmates staging a sit-in in the exercise yard of the Lower Mainland Regional Correctional Centre requested an Ombudsman officer come to the prison to discuss their concerns and complaints. A number of them were dealt with and the situation was defused without violence. (Page 102)

☐ When residents at a youth detention centre complained that they were not permitted to correspond with friends incarcerated at other detention centres, the Ombudsman's office convinced the facility's administration that the blanket ban was not in keeping with the Corrections Branch policy of considering such contact on an individual basis. (Page 103)

☐ When a social worker breached a confidence that ended up traumatizing a youth in his relations with his peers, he was awarded compensation by the Ministry of Social Services and Housing equal to one term's expenses at college. (Page 76)

☐ Following an Ombudsman investigation of a Ministry of Social Services and Housing decision not to provide a 17-year-old youth with income assistance, the ministry revised its policy to require a thorough social work assessment of youths requesting assistance to ascertain whether or not it is in their best interest to live independently. (Page 86)

☐ An Ombudsman investigation of a suitable placement for a 17-year-old psychiatric patient, about to be released, lead to an inter-ministerial, inter-disciplinary approach to the problems at hand, one that involved the patient herself in the location of a suitable community placement. (Page 88)

☐ A long-standing Ombudsman investigation into the Workers'Compensation Board practice of not advising workers of their right to appeal disability pension awards was resolved in 1988, after four years of correspondence. The Board extended the previous practice of advising workers of their appeal rights when benefits are denied, terminated, or reduced, to include advice on all appealable decisions involving permanent partial disability pensions. (Page 118)

☐ After a precedent-setting Supreme Court decision involving the WCB's reconsideration of Review Board findings, the Board followed the decision but would not implement it in cases dealt with prior to the decision unless requested to do so by claimants. After this office suggested it was discriminatory, the Board implemented the decision to all applicable cases.(Page 118)

☐ Because of a clerical error, taxes owing on a property did not appear on a search at the time it was purchased. This office helped convince the Ministry of Finance that the new owner should not be held responsible for back taxes even though they are normally always attached to property and its owner. (Page 54)

Part I

Introduction

Introduction

A. GENERAL MATTERS

1988 has been a busy year for the Ombudsman's office. Public demand for services has continued to be very high, with more complaints received than in any previous year.

In addition to investigating individual complaints of unfairness, the office has initiated several major systems studies into the administrative practice of provincial ministries, Crown corporations and boards. These studies have resulted in public reports under section 30(2) of the *Ombudsman Act*. The extent to which the recommended changes have been accepted and implemented by government is detailed further on in this report.

As was outlined in the 1987 Annual Report, the systems approach to administrative fairness is a supplement to the investigation of individual complaints and not a replacement to it. It attempts, in a timely and constructive way, to recommend changes to administrative practices which will anticipate and deal with the underlying causes of potential unfairness. In this sense, the systems approach operates as a quality control mechanism within a public institution which sensitizes it to the concerns of the public consumer before a problem arises. It has enabled the Ombudsman's office to deal effectively with the 37 per cent increase in jurisdictional complaints since 1985, without any increase in staff or resources.

The vast majority of Ombudsman cases are investigated without publicity. In fact, the confidentiality of this process is a major benefit to individuals and government officials who might otherwise be unnecessarily embarrassed by the public exposure of litigation, media coverage or legislative debate. The office enjoys a respectful relationship with all provincial offices, and there are very few cases which remain unresolved after a recommendation for change is made.

However, a few cases do become public each year and it is these which tend to shape the image of the office in the public's mind. Some cases are notorious before they reach this office, others are publicized by the complainants and some cases are reported on publicly by the Ombudsman because they are of major public concern.

In all cases, it is vitally important that the Ombudsman's office demonstrate its neutrality and independence. It is neither the advocate of any particular individual or group in society nor is it an agent of government. It is not its role to set or review government policy. The role of the Ombudsman is to monitor fairness in public administration. And it is essential to the effectiveness of the Ombudsman's office that it stay within its mandate.

Many expectations are placed on the office which cannot be met. The dividing line between administration and politics can become blurred in the middle of polarized public debate on sensitive questions. It is a major responsibility of the office to keep cautiously and distinctly to its statutory responsibilities.

With regard to both individual cases and systems studies, several major themes have transcended the work of the Ombudsman's office in 1988:

☐ The vulnerability in our society of children, the elderly, the poor, the disabled, those in institutions, and many new Canadians places special responsibilities on government which this office is called on to monitor.

☐ Administering substainable economic development without environmental damage is widely recognized as perhaps today's major issue. The Ombudsman's office is involved regularly in reviewing the effectiveness of the provincial government's regulation of it.

☐ The privatization of the delivery of public services requires new mechanisms for ensuring quality control. The Ombudsman's office has been called on variously by government, private business, public consumers and public employees to monitor the fairness of the process.

☐ A major source of controversy in our province concerns land use and resource allocation among legitimate, competing yet interdependent interests. In working to help resolve such public interest disputes, the Ombudsman's office has developed a model which discards the debilitating and inadequate litigation process in favour of long range planning, integrated resource management and consensual dispute resolution.

☐ The duty of fairness owed to the public by tribunals and public administrators can be undermined by improper political influence. The Ombudsman's office has reported publicly on ways to maintain the proper distinction between administrative and political actions through independent appointment procedures, structured discretion and open tendering processes.

☐ The integrity of our complex and all-encompassing system of government rests on the trust of the public. The Ombudsman's office has recommended the adoption of administrative practices which would promote that trust, including:
  - publication of government policy and statements of authority in plain language,

- providing opportunities for meaningful participation by those whose fundamental interests are affected,
- effective access to public information,
- respect for privacy, and
- acknowledging an individual's right to full reasons for adverse government decisions.

☐ Fair, independent appeal systems are an essential aspect of administrative fairness where fundamental interests are affected by government decisions and actions. The Ombudsman's office has made recommendations on numerous appeals systems.

This section of the report provides updates of government action on outstanding public reports and recommendations, public reports in progress and summaries of other major initiatives of the past year.

B. IMPLEMENTATION UPDATES

1. Criminal Records Screens

In 1987 the Ombudsman's Office published Public Report No. 5, The Use of Criminal Record Checks to Screen Individuals Working with Vulnerable People, and issued 200 copies. It has been one of our most requested reports and we have had to go to two additional printings in 1988.

The use of criminal record checks is a complex issue, not only involving issues of liability and privacy, but having an impact on existing human rights, criminal justice and employment policies. Criminal record checks alone will not be an effective method of protecting vulnerable people but can be regarded as one of a number of tools which can be utilized in establishing public services that help ensure children and vulnerable adults are not at risk. The widest interests of society are best served when the public can place real confidence in a screening process that does not deter competent people from providing services to vulnerable people. The Ombudsman's Report and recommendations are directed at the development of a comprehensive, administratively fair and effective screening process.

The interest expressed in this report has included the ministries whose policies are to check those employees working with children and dependent adults; Social Services and Housing, Health, Attorney General and Solicitor General. In addition, day-care centers, youth athletic groups, university child care departments and counselling services have all requested copies of the report.

The Greater Victoria School Board was considering implementing a system of criminal record checks for teachers and teachers' aides with School District No. 61. The chairman was concerned that if such a practice was introduced that it be as fair as possible and include provisions for confidentiality and appeals. He asked the school board to study our report prior to devising a model to be discussed within the school district.

The interest has not been confined to British Columbia; we were recently contacted by the national office of Big Brothers Association in Toronto. They wanted a copy of the report to consider as part of setting their national policy.

2. Liquor Licensing and Control

In 1987, the Ombudsman's office issued Public Report No. 6, entitled Liquor Control and Licensing Branch: Fairness in Decision Making, which focused on fairness issues arising in the administration of provincial liquor and licensing legislation. The report contained 19 recommendations that dealt specifically with the need for clear policy direction to public servants exercising discretion, the necessity of structuring without fettering that discretion, and the essential elements of a fair and independent appeal of administrative decisions.

The branch is making progress towards developing standards that would be appropriate to incorporate into the regulations. Recommendations for amendments to regulations are expected to be put forward in early 1989. The branch is in the process of developing a comprehensive policy mannual which, along with an improved information distribution system for applicants, is targeted for completion in September 1989. With regard to the appeal system, the branch is in the process of examining different appeal models. It is anticipated that preferred options will be put to the minister in early 1989. In 1988, this office received a complaint against the Liquor Control and Licensing Branch alleging improprieties in the referendum process during the licensing of the Knight Street Pub. Shortly thereafter, the Deputy Minister of Labour and Consumer Affairs contacted the Ombudsman and invited him to review the ministry's internal investigation which was then underway. The focus of the Ombudsman's investigation was the administrative acts or omissions of the ministry both in the process of licensing the Knight Street Pub and in the course of its internal investigation of complaints it had received regarding the referendum.

After reviewing the branch's handling of two competing applications for preclearance to conduct a referendum, this office concluded in Public Report No. 12, An Investigation into the Licensing of the Knight Street Pub, that the practices of the branch had been applied in an unfair manner. We recommended that branch practices for considering competing applications be clarified, made known to the applicants and consistently applied.

With regard to the circumstances leading to the general manager's approval of a particular company to conduct the referendum for the Knight Street Pub, we concluded that the approval had been based on irrelevant considerations, namely political considerations. The public report also recommended that the branch develop and apply standard procedures to review referendum documents effectively and to ensure the timely and effective investigation and resolution of complaints.

Some of the recommendations in Public Report No. 12 relate closely to those made in Public Report No. 6. Policy formulation is necessary to develop a framework for principled decision-making in light of the statutory objectives of the program. In the absence of stated criteria, an administrator will be faced with the necessity of adjudicating indefinitely on a day-to-day basis. The inevitable result of such ad hoc decision-making is an inconsistent and often contradictory history of decisions.

Many of the administrative decisions made by the former general manager in the licensing of Knight Street Pub were made in the absence of policy. Policy statements offer guidance to the decision-maker who is then more likely to apply that policy. When policies are available to the public, they also serve as a check against unintended or arbitrary departure from them on the part of the decision-maker. Hence, it is easier for those affected by decisions of administrators who depart from policy to challenge those decisions.

A comprehensive policy manual would address all stages of the licensing process including the adjudication of competing applications within the same area, selection of the company to conduct the referendum, and the branch's review of the referendum results. Had such comprehensive policy been in place and available to the public, it might well have affected the licensing of the Knight Street Pub at several different stages, as follows:

1. The competing applicant for preclearance would have known the factors to be taken into account by the general manager and, therefore, could have challenged the unfair application of those factors
2. Specifying the requirements for a company conducting a referendum would have offered support to the general manager to resist external political pressure to allow a company which did not meet those requirements to conduct the referendum.
3. Specifying standard procedures in reviewing referendum documents would have assisted staff and might have precluded the branch's approval of the referendum results.
4. Enumeration of standard procedures to ensure timely and effective investigation and resolution of complaints could have avoided the situation in which the general manager neglected to carry out a further review of the referendum as he stated he would in a letter to the complainant.

While it would be optimistic to conclude that comprehensive written policies and procedures would have prevented the Knight Street Pub controversy, it is certain that irrelevant considerations are more likely to intrude on decision-making in a policy and procedural void.

The specific findings of our investigation are detailed in a Ministry of Labour and Consumer Services case summary further on in this annual report.

3. Workers Compensation

After we issued a public report on the province's workers' compensation system in July 1987, a meeting was held with Ministry of Labour officials in September 1987 to discuss our recommendation that the Minister of Labour convene a conference of representatives of all interested parties to review the system. We felt that there should be some vehicle for continuing, expert discussion of compensation issues and suggested that a useful alternative to a "conference" might be a standing advisory council reporting to the minister. Such a group could represent the mutual interest of employers, workers and the public in ensuring a balanced and trusted system and, if it proved constructive to all parties, might be the forerunner of a corporate board to oversee compensation issues in B.C.

The Minister of Labour substantially agreed with this recommendation and, in April 1988, he appointed an independent advisory committee. The committee consisted of representatives of labour, management, government and the Workers' Compensation Board (WCB), and was chaired by a former chairman of the Labour Relations Board. Its unanimous report, submitted to the minister on October 31, 1988, identified and made proposals on the major structural issues facing the workers' compensation system. The committee expected that the implementation of its proposals would have the "dual result of effective participation by the interested parties and proper accountabilities by those running the system."

The minister found that it was significant and impressive that the committee reached unanimous agreement on their recommendations. From the perspective of this office, it was an important first step towards reconciling the many different interests in this complex field. As emphasized by the committee, once the recommended structures are in place, it will be necessary for the new board of governors to initiate a review of the existing law and policies of the system. It is hoped that the Ombudsman's Public Report No. 7 will be of assistance in focusing such future review.

4. Skytrain Report

In November 1987, the Ombudsman's office issued Public Report No. 8 concerning the impact of the new Automated Light Rapid Transit (ALRT) system, or Skytrain as it is known, on adjacent residential neighbourhoods. The report included recommendations which, if implemented, would mitigate Skytrain's negative effects. The recommendations were accepted by the board of B.C. Transit in January, 1988 and a mitigation program has commenced in two phases. Phase I involves projects on public property and on the system itself. A budget of $1 million for this Phase was approved by Treasury Board in July 1988. Phase II will deal with mitigation on private property, and awaits Treasury Board approval.

Phase I is focused primarily on noise reduction and privacy enhancement. B.C. Transit and the manufacturer are continuing to work towards meeting the original noise specifications. This effort includes an improved program of maintenance, including replacement of old wheels with superior resilient wheels and wheel and rail lubrication devices on all Skytrain vehicles. Research by B.C. Transit and the manufacturer have produced noise reduction in testing with the use of noise walls attached to the guideway. Suitable areas for erection of these barriers are being evaluated. Privacy enhancement has been attempted in Phase I through a large scale tree planting project. B.C. Transit has spent $230,000 on landscape screening in East Vancouver.

We have been impressed by B.C. Transit's commitment to implement the recommendations in the Ombudsman Report as quickly as possible, ameliorate the system's negative effects and improve the benefits of this unique commuter rail system. We look forward to the successful completion of Phase I and the commencement of Phase II in 1989.

5. Doctor Billing Numbers

Public Report No. 9, issued in November 1987, reviewed the Medical Service Commission's administration of legislation regulating the issue of medical practitioner billing numbers. Our report did not review the legality of the legislative scheme because that matter was then before the courts. The Ombudsman report made recommendations to improve the administrative fairness of the system, including the creation of an independent appeal system, the development and publication of clear, consolidated policies and criteria governing the issue of practitioner numbers, procedures for ranking applications in practitioner areas with more than one hospital, and action to ensure that the purchase of a practice does not advance the application for a number.

While the Medical Services Commission generally agreed with the recommendations, no action was taken to amend the legislation pending the outcome of the court action. In August 1988, the B.C. Court of Appeal ruled that the legislation deprived doctors of "liberty" within the meaning of Section 7 of the Canadian Charter of Rights and Freedoms. The court stated that "the scheme of the act and regulations is so procedurally flawed and so manifestly unfair in substance, having regard to the effect upon the appellants, as to violate the principles of fundamental justice". Ombudsman Public Report No. 9 was included as part of the appellant's submission on procedural fairness and the Court of Appeal's findings are consistent with the observations in this report.

6. B.C. Hydro Collection Policies

In 1988, B.C. Hydro made a number of changes in response to the recommendations we made in Public Report No. 10 on Hydro's collection practices, issued in February 1988. One of the most significant changes was the introduction of the four regional reviewer positions, one in each of Hydro's four regional offices.

Now, when we receive a complaint that concerns a residential account, we refer the complainant to a regional reviewer to attempt to resolve the matter. Our office is satisfied that this is an adequate internal apparatus to deal with collection complaints. If a complainant does not feel that Hydro has responded adequately, he or she may refer the matter back to our office for investigation. It is interesting and rewarding, to both ourselves and B.C. Hydro, that our office did not get a single return call from a complainant after we suggested they take their problem back to this internal quality control mechanism.

Hydro has also introduced the position of manager of customer services to act as a liaison on most Ombudsman complaints other than the residential account collection issues. Creation of this position does not preclude our direct contact with other Hydro managers and line staff where necessary. However, it streamlines the initial approach we use and, most importantly, speeds up the eventual reply to the complainant.

We are also pleased to report that, after several years of negotiations, B.C. Hydro and the Ministry of Social Services and Housing have implemented our recommendations with respect to persons who receive income assistance and experience difficulty in paying overdue Hydro accounts. Before there is any disconnection of service, a recipient can now obtain extra time in order to confer with a financial assistance worker, request additional funds and have a manageable repayment schedule negotiated with Hydro.

Hydro also made numerous other changes in response to recommendations in the Ombudsman's report which allow for efficient account management within a structure of carefully authorized policy and practice which is fair and convenient to residential users and cardholders.

7. Pesticide Regulation

Pesticides are widely used across Canada for agricultural and forestry purposes, for railway, hydro and highway rights-of-way, by regional districts for insect and weed control, and in homes and gardens. Federal, provincial and municipal governments all regulate the use of pesticides, recognizing that these substances can be dangerous if improperly used.

In our province, the Ministry of Environment administers and enforces legislation that controls the use of pesticide on public land by a system of pesticide use permits issued under the *Pesticide Control Act.* (The majority of pesticide use in B.C. is not regulated because use on private land is generally exempted from requiring a permit.) Pesticide use permits have been the focus of appeals, court challenges, civil disobedience and public mistrust of government pesticide use decisions. This suspicion interferes with natural resource planning and management by government and industry and does not lead to public confidence that their health and safety interests are being protected.

The Ombudsman's Office has, over the years, received complaints from members of the public concerned about the lack of opportunity to participate effectively in the decision-making process for determining the safe use of these chemicals.

The Ombudsman's Office commenced a systems study which tracked the process by which an application for pesticide use is reviewed by four different ministries; Agriculture and Fisheries, Health, Forests, and Environment as well as by the federal department of Environment Canada. A permit is granted if the administrator of the *Pesticide Control Act* is satisfied that the pesticide use will not cause an unreasonable adverse effect to people or the environment. Our study included the tribunal which hears appeals under the *Pesticide Control Act*, the Environmental Appeal Board.

The study resulted in Public Report No. 11 issued in March 1988 and included 11 recommendations, 10 of which the Minister of Environment has agreed with and on which he has indicated that his ministry will take action.

The recommendations to be implemented include:

☐ The publication of criteria applied when the administrator or the Environmental Appeal Board decides the use of a pesticide will not cause an unreasonable adverse effect.

☐ Public notification of a pesticide use application with an opportunity to respond with site-specific information.

☐ Standard evaluation of pesticide use applications including the need to use a pesticide, alternative methods of pest control and tracking for repeated pesticide use in the same area.

☐ A formal policy of disclosure for public access to the information used by the administrator in making his decision about pesticide use.

☐ Giving the Environmental Appeal Board authority to provide informal mediation by a member who will not subsequently rule on any appeal that may proceed.

☐ As a general rule, pesticide use appeals proceed by oral hearings, open to the public and if the hearings are by written submissions that procedure be outlined by the Environmental Appeal Board.

☐ The tribunal will disclose any material which it has independently obtained to use, or has relied upon, during an appeal.

☐ Future appointments to the Environmental Appeal Board should take into account the specialized pesticide work of the tribunal.

The recommendation with which the minister disagreed was that every public notification of a pesticide use permit include any conditions imposed, outline the right to appeal and, where the permit is for more than one year, require that the public be notified of the beginning of every use season. The minister believes that the current practice of advertising a part of the permit (i.e., the pesticide name, quantity and method of use, the location and duration of the pesticide program and the permit holder's name and address) is sufficient information for interested members of the public to follow up and read the entire permit. The entire permit does include conditions of use, a map of the area and the details for appeal, and a copy must be kept at the permit holder's address.

8. Abortion Clinic Surveillance

In August 1988, the Ombudsman's office was called upon to review the purpose, process and relevant circumstances of the provincial government's involvement in the covert surveillance of groups and individuals in the pro-choice movement between January and June of 1987. Wide public concern had been expressed that the government had improperly interfered with the privacy and political rights of individuals and community groups who were planning to open a free-standing abortion clinic. At all times relevant to the surveillance, the operation of a free-standing abortion clinic would have offended the Canadian Criminal Code which the provincial government had publicly stated its intention to enforce. (The relevant provisions of the Criminal Code were later held to be unconstitutional by the Supreme Court of Canada).

In these circumstances, the Attorney General hired a private law firm to prepare a case for a civil injunction to prevent the opening of such a clinic. In turn, the law firm hired private investigators to gather information, through covert surveillance, to support the injunction application. The whole exercise was discontinued when it became clear that there was no evidence of an actual ability to open and operate a free-standing abortion clinic at that time. Public Report No. 13 released in August, 1988 detailed our findings. It concluded:

1. There was no persuasive evidence that the government's purpose in this case was to discredit unfairly or put to a disadvantage individuals and groups who held pro-choice views.
2. The limited government purpose was to commence civil proceedings to attempt to stop the opening of a free-standing abortion clinic. While this purpose was not improper in the circumstances, it did involve the exercise of judgment by the former Attorney General which is legitimately open to question by the public. It was an extraordinary and intrusive measure that had the potential to intimidate the legitimate exercise of political rights by individuals and community groups. In this sense, it was inappropriate.
3. The activities of the private lawyers and investigators in this case were limited to gathering information and preparing documents relevant to the government's purpose of commencing civil proceedings. Such activities effectively ended in June 1987 with the conclusion that there was no actual ability to open and operate a free-standing abortion clinic.
4. There was inadequate accountability and control over the actions of private lawyers and investigators carrying out public duties. Whether the actions of these contractors were proper or not, this represented a breach of government's responsibility to exercise proper care and attention in the performance of public duties. This error of omission was neither intentional nor reckless.

Public Report no. 13 recommended:

1. Government should ensure, in the interests of public confidence in fair public administration, that covert practices not be employed when open and direct relationships are adequate.
2. The private contracting of public services should be documented by clear written instructions and effective control to ensure that all actions carried out on behalf of government are manifestly accountable to the public interest.
3. An advisory board should be established pursuant to section 25 of the *Private Investigators and Security Agencies Act* to consider and advise on matters of minimum standards and codes of ethics that should be developed in the public interest.
4. The Solicitor General should reconsider the regulations pursuant to section 26 of the *Private Investigators and Security Agencies Act* so as to deal with standards of training for private investigators.
5. In the absence of comprehensive privacy and access to information legislation in B.C., provincial institutions should adopt and publish a statement of fair administrative practices regarding privacy and information so as to enhance public understanding, trust and participation in government.

The Ministry of the Solicitor General has indicated that the recommended action under the *Private Investigators and Security Agencies Act* is underway.

9. B.C. Board of Parole

A 1987 decision by the B.C. Board of Parole to grant day parole to convicted terrorist Juliet Belmas touched off a series of events which culminated in a review by the Ombudsman's office and Public Report No.14 in October 1988. The issues dealt with in this public report related to:

☐ The appropriateness of a telephone call from the premier of the province to a Parole Board member allegedly to discuss the board's decision.

☐ The concern of some citizens about the public pronouncements of the former Attorney General which decried the parole board's decision.

☐ The provincial Cabinet's decision not to reappoint certain parole board members allegedly as a consequence of the Belmas decision.

☐ The appropriateness of the new parole board chairman, who had once been director of the centre where Ms. Belmas had been incarcerated, sitting on a subsequent board hearing involving Ms. Belmas.

Although the results of the Ombudsman's inquiry determined that there were no fundamental administrative errors involved in the issues considered, the case clearly demonstrated the need for the province to have its own *Parole Act*. We believe such a statute could underscore the autonomy of the Parole Board and better ensure that appointments to the board are reflective of the concerns of the wider British Columbia community and would not be made on the basis of some narrow political interest. Other recommendations related to the reappointment of board members, their involvement in subsequent hearings concerning the same individual, their obtaining of other government appointments and the tenure of the chairman.

The report received a favourable response from Parole Board officials and from the Solicitor General's ministry, the authority which would carry the responsibility for a new *Parole Act*. We expect such legislation to be introduced in 1989.

During our investigation into the Belmas affair, we became aware of certain anomolies in the way some health or psychological records were handled in relation to Parole Board hearings. We felt the process needed tightening to ensure that the rights of all parties to the hearing were adequately protected. As a result of our concern, the Parole Board chairman convened a meeting with Corrections Branch officials, including its Director of Health Services and Director of Psychological Services, to determine a protocol on client-access and confidentiality of health records and documents submitted to the Parole Board by health professionals. We believe the work done by this group will better protect the rights of both the residents who require such services and the professionals who provide them.

10. Aquaculture Regulation

Public Report No. 15, "Aquaculture and the Administration of Coastal Resources in British Columbia" was released by this office in December 1988. The report makes three major recommendations which call for:

a) clear legislative direction for the regulation of the aquaculture industry;
b) the development of a framework for integrated management of coastal resources, incorporating public participation in long-range, multi-party and inter-government planning (local, regional and provincial); and,
c) the development and application of consensual dispute resolution mechanisms as an alternative to costly and often counter-productive litigation.

Response to the report by provincial ministries, industry, the academic community and coastal residents has been encouraging. The practical aspect of implementing the report's recommendations is being addressed by the inter-ministerial Aquaculture Steering Committee, with Agriculture and Fisheries continuing to act as lead ministry.

The matter of siting and leasing Crown-owned foreshore for aquaculture continues to generate considerable controversy, especially in desirable development areas such as Campbell River and the nearby islands. If implemented, the principles advanced in Public Report No. 15 could help avoid imminent conflict and resolve outstanding complaints. Paramount among these principles is the necessity to consult extensively with local government and citizens, and to make meaningful their participation in a program of cooperative resource planning, allocation, management and problem-solving. (See 'Consensual Dispute Resolution' below)

11. Police Complaints and the Fullerton Report

The Ombudsman's office has regularly been involved in reviewing complaints from the public against members of municipal police forces. The office has no jurisdiction to review the actions of the RCMP, which is a matter of federal administration. The Ombudsman's 1986 Annual Report set out the terms of a protocol between the Ombudsman and the B.C. Police Commission for assisting individuals through the *Police Act* complaint process and for conducting such further investigations as might be considered appropriate. This process has worked well in the interests of ensuring a full and fair review of individual grievances, protecting the integrity and quality of police services, and giving confidence to the general public.

The value of this role of the Ombudsman's office was demonstrated in the matter of Robert and Francine Fullerton and the Matsqui Police Service. The Fullertons claim that they were treated improperly by various members of the Matsqui Police Service during an incident in 1985. Matsqui Police strongly deny these allegations. The widespread public discussion of this incident has left uncertainty as to what actually happened. Unfortunately, the matter has never been exposed to a public hearing because it was dismissed as being "vexatious and not made in good faith" by the former Matsqui Police Chief. His decision was confirmed without hearing by a panel of the Matsqui Police Board. Although this dismissal was in accordance with the provisions of the *Police Act*, it did not serve the public interest and constitutes a continuing unfairness to the police and the Fullertons. Although a special investigation by the B.C. Police Commission determined that it would have been better not to dismiss the matter in this way, the commission had no power to hold its own hearing under the *Police Act* and it did not recommend any other sort of hearing.

During 1988, the Ombudsman's office investigated the adequacy of the public complaint process and the circumstances of the Fullerton case. The resulting Public Report No. 16 was released in January 1989 and recommended that the Cabinet empower the B.C. Police Commission under the authority of the *Inquiry Act* to hold a public hearing at the earliest possible date into the Fullertons' allegations. This recommendation was accepted immediately and the necessary Order-in-Council has been issued.

Under the new *Police Act*, passed but not proclaimed into law in 1988, it is clearly accepted that a complaint against the police should not be dismissed without the right to a public hearing. This is an important improvement, as is the creation of the position of Public Complaints Commissioner under the Police Commission.

However, the new act also specifically excludes the Ombudsman from *Police Act* matters and it is difficult to understand how this could be in the public interest. If anything, the Fullerton matter demonstrates the value to the public interest of scrutiny which is independent of the police, the Police Commission and government. It is therefore recommended that this exclusionary section not be proclaimed and be repealed as soon as practical.

12. Willingdon Youth Detention Centre

Ombudsman Public Report No. 17, issued in January 1989, was prompted by a very troubling concentration of self-harm incidents at the Willingdon Youth Detention Centre in early January 1989. The investigation of individual and systemic concerns at Willingdon has been an on-going process for the Ombudsman's office since 1984. These individual incidents were investigated and reported on immediately by the Ombudsman's office. In these cases, it was indeed fortunate that none of the youths suffered permanent physical injury; however, this type of incident clearly holds the potential for tragedy.

While the eight incidents could not be linked clearly to any common institutional cause, a range of potential contributing causes was identified in the report, and will be the subject of ongoing attention by the Corrections Branch and this office. These include the underlying psychological motivation for self-harm, victimization among youth residents, adequacy of facilities, appropriate staff levels and training, classification and segregation issues, and the guiding philosophy of containment.

Following the Ombudsman's report, the Solicitor General announced his intention to submit a proposal to Treasury Board for a totally new youth containment centre. In the short term, the Corrections Branch has commenced renovations to existing facilities to address some of the inadequacies noted in the report. It has also clarified policy regarding restrictions on the use of handcuffs, applied for funding for a psychological profile study of residents, conducted a preliminary review of all self-harm incidents over the past several years and adjusted some staff levels and hours of work to improve security and access to programs. The Ombudsman's office will be monitoring these and other changes, making further recommendations and reporting publicly as required. It should be noted that all youth residents and staff at Willingdon have access to the Ombudsman's office to discuss any complaints or concerns on a confidential basis.

Of fundamental importance in any consideration of youth correctional issues is that they not be seen in isolation from general society. Youth in custody bring with them a host of physical, psychological and social needs. When they leave a correctional facility, they face intense economic and personal challenges. The approach of the Ombudsman's office towards the administration of all provincial services to youth is to measure them against a continuum of educational, health, social and correctional needs, whether the youth are in or out of custody at any particular time.

13. AZT Funding

We received a number of complaints in 1988 from individuals and from representative groups regarding the Ministry of Health's funding policies for 'AZT', a drug provided to AIDS patients through St. Paul's Hospital. It was alleged that the ministry was improperly discriminating against AIDS patients by requiring them to pay a portion of the cost of this drug while providing drugs free of charge for other patients in different but comparably severe situations.

With the broad public interest in halting the spread of this disease in mind, we consulted with senior officials of the ministries of Social Services and Housing, and Health, medical and administrative personnel at St. Paul's Hospital, the federal Ministry of Health and Welfare, the Cancer Foundation, the National Medical Reserach Council and medical officials in other provinces.

We were unable to substantiate the complaint of improper discrimination. However, we concluded that considerable doubt remained as to whether the funding policy is fair. The financial, medical and social issues involved are complex and there is uncertainty about potential for improper discrimination. We recommended full funding of AZT through a specified supplement to hospital operating budgets, research grants or a specialized agency similar to the Cancer Control Agency. This recommendation has not been accepted by the Ministry of Health due to its concern it would lead to claims for similar treatment from users of other unfunded drugs.

14. Chiropractors

The B.C. Association of Chiropractors and the Association of Chiropractic Patients contacted the Ombudsman's office in 1988, asking that we resolve a longstanding question of allowing chiropractic services in hospitals.

There was confusion about who could authorize such a practice where it is requested by a patient and approved by the doctor. Most of B.C.'s public hospitals are administered by societies and have boards, bylaws and rules which govern local procedures. Within that framework, a hospital must also be accredited and provide services acceptable to the Ministry of Health to be funded through the ministry. Doctors who wish to admit patients must apply to a hospital for this privilege and must be licensed by the College of Physicians and Surgeons to practice in B.C. Other professionals such as nurses and physiotherapists, work in hospitals under a different set of rules, complicating the issue.

After reviewing the situation with individual hospitals, the Ministry of Health and the College of Physicians and Surgeons, we determined that each hospital society has the authority, through its bylaws or regulations, to pass rules which would allow chiropractors to treat in-patients. This would be at the choice of each hospital. Once such a bylaw existed, the Ministry of Health would consider approving the rule, provided that the issue of liability had been addressed adequately and provided that there was assurance that the responsible doctor was willing and able to assume responsibility for the medical care of a patient receiving such chiropractic treatment.

It is significant that the matter must begin at the local level rather than with the Ministry of Health if a particular hospital wants the service to be available. If an attending doctor with privileges approves and the question of liability is covered, then the Ministry of Health would not interfere with the hospital provision of chiropractic services. Through this investigation we were able to provide clarification to the various parties as to the conditions and process for the provision of chiropractic services in hospitals.

15. Provincial Capital Commission

The Provincial Capital Commission follows a practice of conducting its meetings in-camera rather than inviting the public to attend. As the commission deals with matters that are of direct concern to the residents of the capital city, one of the Victoria MLA's approached our office and expressed his concern about these in-camera meetings.

The mandate of the Provincial Capital Commission is spelled out in the *Capital Commission Act*. The statute permits the commission, subject to Cabinet approval, to pass its own bylaws. The commission has 14 members; eight members are appointed by Cabinet, two each by the City of Victoria and the Corporation of the District of Saanich, and one each by the Township of Esquimalt and the Corporation of the District of Oak Bay. It is quite clear that the commission is a Crown corporation, not a municipal government body, and that its members are appointed rather than elected to their commission positions.

The legislation gives the commission no guidance as to the conduct of its meetings. Therefore, the commission is not contravening any statute or other instruction when it chooses to hold its meetings in-camera. It has, in the recent past, held a vote among its members as to whether its meetings should be open to the public or not. As on previous occasions, the vote confirmed the existing practice of holding in-camera meetings.

The Ombudsman's office has responsibility with regard to administrative practices and the issue of access to public information by those who seek it is subject to general principles of administration practice, some of which were noted in a letter to both the MLA and the chairman of the commission. These are commented on below under 'Privacy and Access to Information'.

C. OTHER MAJOR INITIATIVES

1. Principal Group Investigation

During 1988, the Ombudsman's office has been involved in an in-depth investigation of the activities of British Columbia government regulators in the regulation of the Principal Group of companies, including First Investors Corporation Ltd. (FIC) and Associated Investors Corporation Ltd. (AIC). This review has involved the analysis of documentation and taking sworn testimony from B.C. officials relevant to these companies between 1970 and 1987. Parallel investigtions have been proceeding in Alberta, conducted respectively by the Alberta Ombudsman and William Code, Q.C., appointed by the Court of Queens Bench pursuant to the *Business Corporations Act* of Alberta.

Our investigation was initiated following complaints brought under the *Ombudsman Act* on behalf of the 17,000 B.C. investors who remain at risk of losing approximately $50 million as a result of the financial collapse of these companies.

It is expected that this office's report on the B.C. government's regulation of these companies will be completed and published by the summer of 1989.

2. Sewage Regulation

During the latter part of 1988, the Ombudsman's office, with the cooperation of the ministries of Health, Municipal Affairs, Recreation and Culture, and Environment, began a study of the process used to issue permits for on-site sewage (septic tank) systems in B.C. Our office has investigated a number of complaints related to on-site sewage permits, many of which have been resolved. However, in the process of arriving at the resolutions, public health inspectors, consultants, land developers, and local government administrators have raised concerns that the current regulatory system often results in decisions that appear to be arbitrary, unfair and confusing.

The on-site sewage permit process is closely linked to issues of land development, public health, community planning, and environmental management. Our study is looking at the history of the problem in B.C., the use of discretion and policy, the role of the public health inspector and the ways in which the current system creates at least the perception of unfair decision-making.

In 1987, 73 areas in the province were identified by an inter-ministerial task force as having significant on-site sewage disposal problems. Several of these problem areas may require millions of dollars to correct. It is hoped that by studying the process used to grant sewage disposal permits and by recommending changes, problems such as those described by the task force can be prevented in the future. The Ombudsman Report will be published in mid-1989.

3. Credit Reporting Legislation

The *Credit Reporting Act* is administered by the Ministry of Labour and Consumer Services. The act provides for a registrar who has the power to register reporting agencies using certain criteria and suspend or cancel licences. The act also sets out standards and procedures for reporting agencies to follow.

Although there continues to be a steady increase in the use of consumer credit, resulting in an equally steady increase in business for credit reporting agencies, neither the Registrar of Reporting Agencies nor the Ombudsman's office receive a large number of complaints in this areas. This may be because individuals who were denied credit are too embarrassed or lack the perseverance, energy or communications skill to trace an unsuccessful application for credit back through the system. They may not be aware that there is a law that confers certain rights on them, a law that may have been broken by the reporting agency. They may even be unaware that there are reporting agencies.

In 1988 we received a complaint from a person who had run into financial difficulties because of the economic downturn in the early 1980s.

The *Credit Reporting Act* spells out the length of time after which a person's credit record is considered, once again, to be unblemished. This woman found that her record was far from unblemished even after the specified time had elapsed. She managed to get some comments removed from her credit record on her own, and the ministry was helpful to her in some other respects. However, it was an uphill battle and at the very end, she found that her credit record, although now clean in itself, contained reference to a phone call she had made to determine whether the earlier negative comments had been removed. She seemed to be back at the beginning.

We pointed out to the ministry that the present legislation was drafted in the early 1970s, and that between then and now, times have changed. Consumers rely on credit to an ever-greater extent. At the same time, individuals have become very concerned about their rights to privacy and the protection of information that is personal. When the legislation was enacted, information was stored locally on paper and everybody accepted that time elapsed between an application for credit and a credit granting decision. With the advent of computers, modems, and fax machines, both procedures and expectations have changed. Of additional concern is the fact that recent mergers of credit reporting agencies in Canada with similar organizations in the U.S. may result in credit information being stored outside the country and give rise to issues not anticipated by provincial legislation.

We suggested to the ministry that the time has come to have a fresh look at the legislation that governs the reporting of personal information, including credit information, keeping the legitimate interests of both consumers and lenders in mind.

The Deputy Minister of Labour and Consumer Services subsequently informed us that he has asked his staff to review both our comments and the recommendations made by this particular complainant and by the B.C. Civil Liberties Association, and advise him of possible changes in procedures and legislation. We trust that this internal review will result in a wider consultation process leading up to legislative change.

4. The Deputy Ombudsman and the Children and Youth Team

The Need for Special Attention

The success of the Ombudsman concept around the world has led to hundreds of complaint handling offices, modelled on the same principles, being established in universities, hospitals and long-term care homes, banks, multi-national corporations and even with regard to the military and police. With all their variations, they have a common goal of providing the individual with an independent, accessible and effective means for dealing with a grievance concerning the particular institution.

Ombudsman's offices are in unique positions to identify particular segments of the public who are especially affected by government decisions and action. In the past 10 years, children and youth have increasingly been acknowledged as being particularly vulnerable. Parents have the primary responsibility for the care and protection of their children; but if parents cannot or will not exercise that duty, in many countries, the state is mandated to do so. Allegations of mistreatment of children while in the care of the state have increased, ranging from inappropriate placement and neglect of diagnosed physical and psychological needs of children, to sexual and physical abuse by care givers. Complaints also include poor training and supervision of staff and unrealistic working conditions that do not allow for individual attention to children.

Children and youth who are affected fundamentally by government decisions are frequently without a choice in the decision-making and without a voice if decisions affect them adversely.

The Response in Other Jurisdictions

The response to reports of agency misconduct or incompetence towards children has taken many forms; child advocates, official guardians, and citizen groups like the Children's Ombudsman at the Swedish Save the Children Federation. It has also led to an awareness within many formal Ombudsman's offices of the distinct needs of children and youth for better access to Ombudsman services.

The first legislation establishing an appointed, independent Ombudsman for Children was in 1981 when Norway created the position of the commissioner for Children. Israel established a municipal Children's Ombudsman in Jerusalem.

At a 1986 National Conference of Canadian Ombudsman's offices, agreement was reached on a declaration of principles which focused on handling complaints from or about children. It was acknowledged by all that such complaints would receive special priority given the immediate nature of most childrens' needs and the importance of responding to the complaint in the environment in which the concern had arisen. There was a recognition of a need for specific training to be given to Ombudsman staff most likely to receive such complaints in order to increase sensitivity to children's rights and protection issues.

All Canadian Ombudsman's offices affirmed that wherever possible a child should be personally involved in the complaint process and it's outcome and that where a child was unable to advocate his or her own rights, direct action should be taken to provide services that would represent the best interests of the child. The conference also endorsed the practice of regular information-sharing betweem Ombudsmen concerning investigative methods and the outcome of investigations of childrens' complaints.

The Response in British Columbia

In October 1987, the Ombudsman of British Columbia appointed a Deputy Ombudsman for Children and Youth, the first such office in Canada. This new position is specifically responsible for coordinating Ombudsman investigations into the provision of services to children by government ministries, for developing outreach programs to ensure direct accessibility for children to the Ombudsman's office, and to act as a liaison with provincial and local agencies concerned with children's issues. The creation of the position opened a new avenue for children, youth, families and those who work with them to resolve problems and to raise critical issues about the needs and rights of children.

The appointment also acknowledges that since the office's opening in 1979, there have been a constant and increasing number of complaints from families and youths affected by government ministries. The complaints are commonly about services or the lack of them or about the way that the relationship between government ministries may affect the delivery of services to a child or family. The experience of the office has shown that troubled children or families frequently can face a range of difficulties requiring more than one type of service. This is particularly true for the approximately 7,000 children whose legal custody has been transferred to the state. A high proportion of them have been abused, neglected or are severely handicapped. Approximately one quarter of the children in state care are of native Indian heritage. These children are often affected by jurisdictional disputes among service providers as well as cultural and family disruption. The Deputy Ombudsman's most common role is to work for a process which facilitates coordinated planning and treatment delivery for these children and their families.

Of Canadian provinces, British Columbia has the greatest number of separate ministries providing childrens' services; Attorney General, Solicitor General, Education, Advanced Education and Job Training, Health, Social Services and Housing and Labour and Consumer Services. With so many authorities involved, the need for coordination is accentuated.

In 1988, the Ombudsman's office undertook a systems study of the established inter-ministry coordination mechanisms. Following the International Year of the Child and Family, the provincial government had established Inter-Ministry Children's Committees (IMCCs) in 1979 at the provincial, regional and local levels. Their purpose was to facilitate the coordinated use of services between ministries to provide a comprehensive program for children in need. In 1981, a provincial Intensive Child Care Resource (ICCR) program was established with a mandate to provide an integrated interministerial resource response to youth with multiple and serious problems. In some areas of the province, strong formal links were developed between ICCRs and IMCCs.

In our 1988 review, we found that the provincial IMCCs, as originally established, have ceased to exist. Field visits by Ombudsman officers to regional and local IMCCs which are still operating found considerable confusion with regard to their current mandate, structure and accountability. In many areas of the province, local or regional IMCCs had ceased to exist. In essence, we found that the IMCC "system", as originally conceived by the Social Service Committee of Cabinet, had atrophied. In addition, the ICCRs have recently been under review, in part as a result of a major reorganization within the Ministry of Social Services and Housing which plays a lead role in administering the ICCR program.

A provincially driven, formally mandated, resource-equipped inter-ministry mechanism is required. However, it can be complex and expensive. It may well be that the IMCC and ICCR systems have served their time and that updated and innovative approaches are required. The alternative is to require youth in need to adapt to a fragmented and complex service delivery system primarily designed for the purpose of administrative expedience.

Our observations and concerns were shared with the Deputy Ministers' Committee on Social Services and in July 1988, this committee agreed to establish an inter-ministry task force "...to recommend a course of action to ensure inter-ministry coordination respecting child, family and youth services." We are hopeful that 1989 will see positive initiatives in this important area of government administration.

The children and youth team has pursued an outreach program which has included the distribution of stylized brochures to schools and to a popular chain of convenience and fast food stores. The Deputy Ombudsman has appeared on numerous media programs. The office has been flooded with requests for speaking engagements, ranging from local alternative high schools and Native Indian Friendship Centres to provincial organizations such as psychiatrists' section of the B.C. Medical Association. Lectures are provided regularly to schools of Child Care, Social Work, Public Health, Nursing, and Public Administration and at university and college training programs. The Ombudsman staff have been invited to both provincial and national conferences concerning children to keep professionals who work with children informed of the issues with which they deal. In addition, the Ombudsman's Office has toll free lines which can be used from anywhere in province and staff are available to travel throughout the province to investigate and help resolve complaints.

A number of children and youth initiatives were identified as needing attention over the past year. A few were concerned with process, such as developing a method to keep statistics on youth complaints and an expectation that all youth investigations would be commenced within 24-four hours of contact. Other short term goals which have been met include:

☐ The Foster Parents Association of B.C. has been assisted to develop approaches to the Ministry of Social Services and Housing for training and standards needs that they identified.
☐ A computerized, comprehensive directory of services for children and youth has been compiled and will be made available to service providers in every community in British Columbia.
☐ The office has assisted in revising the provincial Child Abuse Handbook that ensures a co-ordinated response from all ministries,
☐ A process was developed to obtain continuing treatment for adolescent sex offenders once they finished their correctional sentence.

Current initiatives include:

☐ A systems report on the provision of services to children who have developed special-needs problems after they have been adopted.
☐ A review of children held in detention in mental health facilities who have been voluntarily admitted by their parents.
☐ A study of the Ministry of Social Services and Housing policy and procedures for the granting of income assistance for those under 19 years.
☐ Providing assistance with
    - the development of standards for residential care facilities,
    - a review of the draft U.N. Convention for the Rights of Children (see below),
    - the development of a protocol on children who test positive for the AIDS virus,
    - a national conference on legal issues involved in child sexual abuse.

Summaries of individual case investigations during 1988 are found among other case summaries in Part II of this report, under the headings of the ministries which were primarily involved.

5. Children, Youth and Rights

During our meetings with various organizations and agencies providing services to children and youth, the need for a legislative bill of rights has frequently been raised. Our response has been that while a legislated list of children's rights may be desirable, we have, in this country, guaranteed certain rights of children through the Canadian Charter of Rights and Freedoms, federal and provincial acts and regulations, policy and procedural manuals, standards, contracts for service and through the adherance to rules of natural justice and administrative fairness as interpreted by the courts and the Office of the Ombudsman.

The immediate concern of our office is not with respect to a child's rights versus those of his or her parents, but rather the rights of the child receiving services from or in the care or custody of the provincial government.

Societal attitudes about children and youth have progressed from a view of the child as the "chattel" of his or her parents to the more modern view of the child as a person in his or her own right. Canadian laws, policies and practices have reflected this historical evolution while maintaining a recognition of the "family", however defined, as the primary unit responsible for the care, nurture and development of the child.

The Charter of Rights and Freedoms

On April 27th 1982, the Canadian Charter of Rights and Freedoms came into force. While the Charter was intended to apply to all people, it has been used most often in cases involving adults. The Canadian Youth Foundation has observed that:

> *"Society has recognized that the needs and capacities of children and youth differ from those of adults. Although children and youth are individuals entitled to constitutionally protected rights, these rights must be defined somewhat differently from adults...the courts will have to define these rights, and interpret the Charter in a manner that will benefit the children and youth of this country."*

(Youth and the Canadian Charter of Rights and Freedoms: an analysis of the implications, Oct. '88, p. 1)

Current Rights in Law and Policy in B.C.

Government has an extensive legislative mandate for the provision of publicly funded services to children, youth and families. In British Columbia, the administration of child, youth and family services spans seven ministries and includes services of an educational, health, social service and correctional nature.

While the legal rights of children and youth are not spelled out in a single piece of legislation in British Columbia (as they are, for example, in Quebec), these rights do exist in various federal and provincial laws, regulations, policies and procedures. The following list indicates how certain rights are conferred on children at different ages as a reflection of their developing capacities.

In matters pertaining to the *Young Offender's Act (YOA)*:

1. Children have rights and freedoms including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights. (*YOA* 3(1)(e))
2. Children have a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them. (*YOA* 3(1)(e))
3. Children younger than 12 years of age have the right not to be treated as criminals. (*YOA* 2)
4. Children have the right to the least possible interference with freedom that is consistent with the protection of society, having regard to the needs of young persons and the interests of their families. (*YOA* 3(1)(f))
5. Young persons have the right to retain and instruct counsel without delay. (*YOA* 11(1))
6. Where a child who has committed an offence is committed to custody, an automatic review before a youth court shall occur at the end of one year. (*YOA* 28(1))
7. A young person has the right to be informed about his or her rights and freedoms. (*YOA* 3.1 (g))

In matters pertaining to the *Family & Child Service's (F&CS) Act (R.S.B.C. c.119.1):*

8. *Children have the right to protection from abuse and neglect and in all matters the safety and well being of the child shall be the paramount consideration. (Sec. 2)*
9. *Children in care have the right to have a "life plan" with scheduled reviews. (F&CS* Policy 2.11.5)
10. Children have the right to be protected from corporal punishment. (*F&CS* Policy 2.12.5 and *School Act Regs* 14)

In matters pertaining to the *School Act* (R.S.B.C. 1979, c. 375):

11. Children between the ages of seven and 15 years have the right to a free and appropriate public education. (*School Act* 113)
12. Children with handicaps have the right to receive instruction from special education programs. (*School Act* 97)).

In matters pertaining to the *Family Relations Act (FRA)* (R.S.B.C. 1979, c):

13. Children have the right to reasonable and necessary

support and maintenance by their parents, taking into consideration the cost of housing, food, clothing, education and recreation. (*FRA* 56(1))

14. In matters pertaining to custody and access, the best interests of the child shall be the paramount consideration. (*FRA* 24(1))

In matters pertaining to the *Mental Health Act (MHA)* (R.S.B.C. 1979, c.256):

15. A young person who has attained the age of 16 years and who has been admitted to a provincial mental health facility on his own request has the capacity to authorize his or her own treatment. (*MHA* 19(5))

In matters pertaining to the *Marriage Act* (R.S.B.C. 1979, c.251):

16. A young person who has attained the age of 16 years has the right to marry with the consent of his or her parents. (Sec. 24 & 25)

In matters pertaining to the *Adoption Act* (R.S.B.C. 1979, c.4):

17. A young person who has attained the age of 12 years must consent before he/she can be adopted. (S.8.(1.a))

In matters pertaining to the *Name Act* (R.S.B.C. 1979, c.295):

18. A young person who has attained the age of 12 years must consent to any change of name. (S.3.(9))

In matters pertaining to the *Employment Standards Act*(S.B.C., c.107.1):

19. Children under the age of 15 shall not be employed without the permission of the Director of Employment Standards. (S.50)

In matters pertaining to the *Infants Act* (R.S.B.C. 1979, c.196):

20. A young person who has attained the age of 16 years has the right to consent to medical/dental treatment if reasonable efforts have been made to get parental consent or a second physician certifies treatment is in the child's best interests. (Sec. 16)

In matters pertaining to the *Motor Vehicle Act* (R.S.B.C. 1979, c.288):

21. A young person who has attained the age of 16 years may obtain a driver's license through application of his parent or guardian. (Sec. 28)

In matters pertaining to the *Community Care Facility Act* (R.S.B.C. 1979, c.57):

22. Children being cared for in licensed child care facilities have the right to the appropriate provision of care including an opportunity for social, emotional, physical and intellectual growth in a safe and healthy environment. (Regs. Sec. 10 and 16)

In matters pertaining to the *Guaranteed Available Income for Need (GAIN) Act* (R.S.B.C. 1979, c.158):

23. A young person who is not residing with his/her parents may, in the discretion of the administering authority, make application for income assistance and, if refused assistance, has the right of appeal. (Regs. 3(4))

In matters pertaining to the *Criminal Injury Compensation Act* (R.S.B.C. 1979, c.4):

24. A child victim of abuse has the right to apply for compensation in support of rehabilitation and treatment in order to lessen or remove a handicap resulting from the injury. ('s.2(1), 16, 17(1))

In matters pertaining to the *Ombudsman Act* (R.S.B.C. 1979, c.306):

25. Children have the right to complain on their own initiative or through other interested parties where they believe that they have been unfairly treated by a jurisdictional authority.
26. Children confined to an institution or facility have the right to confidentiality in their communications with the Ombudsman. (S. 12(3))
27. Children have the right to be treated fairly and in accordance with the principles of administrative fairness. Specifically, children shall have the right to complain to the Ombudsman about decisions, recommendations, acts or omissions by authorities which may be:
    - contrary to law
    - unjust
    - oppressive or improperly discriminatory
    - based on a mistake of law or of fact
    - based on irrelevant grounds or consideration
    - based on arbitrary, unreasonable or unfair procedure
    - negligent, improper or otherwise wrong
    - or where there has been a failure to give adequate and appropriate reasons.(Sec. 22)

If the Ombudsman finds the complaint to be substantiated, he can make recommendations to remedy the situation. (S.22)

Standards for Service Delivery

The above list is not exhaustive. A comprehensive review of the policies and procedures of the respective ministries will undoubtedly expand upon the "rights" outlined above. Government policies may also be reflected in statements about the standards of care and service which are expected to be met by private or non-profit agencies who enter into a contractual arrangement with government.

Public services to children, youth and families in British Columbia are increasingly being delivered through contractual agreements between government and private or non-profit agencies. An explicit and common understanding between government agencies and private contractors about the rights of children and youth may serve as a useful foundation for the development of standards of service which may then be translated into contractual agreements which are fair, responsive and accountable.

The United Nations Convention on the Rights of the Child

Since 1979, a Working Group of the United Nations Commission on Human Rights has been drafting the text of a Convention on the Rights of the Child. Canada was at the forefront of this initiative which, when it comes into force, "will set universally agreed standards for the protection of children and will provide an invaluable framework for elaborating programs to improve the situation of children."

It is expected that this convention will be submitted to the General Assembly of the United Nations sometime in 1989. This is a symbolic year for children because it marks the 30th anniversary of the Declaration of the Rights of the Child and the 10th anniversary of the International Year of the Child.

Canada will soon have the opportunity to join other member nations in ratifying the proposed Convention on the Rights of the Child. This document is currently being reviewed by Canada and its provinces. By signing the convention, a state signifies its intention to comply with the provisions and obligations contained therein.

The proposed convention recognizes the special vulnerability of children, their needs for special safeguards, protection and care, and the reality that children do not have political rights or influence.

The proposed convention also recognizes "...that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community."

Given the framework of statutes, regulations, and policies already in place Canada and British Columbia appear to be well-prepared for the eventuality that these rights may soon be entrenched in international law. The Ombudsman's office has been requested to assist the B.C. government in preparing its response to the federal government in support of the convention.

6. Child Abuse Allegations

In March 1988, we reported that we were investigating allegations that confidential child abuse information from this province had turned up in a government hallway in Ontario. It was suggested that this indicated a breach of the Ministry of Social Services and Housing's earlier assurances that the Central Child Abuse Registry had been eliminated.

We found that the ministry did have a policy of alerting child welfare agencies across the country where families with children at extreme risk had left British Columbia. Telex copies of some of the B.C. alerts dating back to 1984 had indeed been found in a public hallway adjacent to the offices of the Ontario Government Mail Services. Investigations in Ontario determined that the files were definitely of a confidential nature, that there were lax storage and disposal procedures and that the Ontario Ministry of Government Services staff were careless in handling this information. This situation is currently being rectified.

We reviewed existing policy in B.C. regarding the alerts and found that the information contained is now restricted to the names of the family members and a request that anyone knowing their whereabouts contact the responsible official in B.C. No specific details of the abuse or the suspected abuser are now identified, although the previous practice had been to include such details. The alert also contains an expiry date. We found that current practice does not offend the privacy rights of suspected abusers and was consistent with the ministry's statutory duty to give paramount consideration to the safety of children. However, it was disturbing to us that the confidentiality of this information had not been maintained by Ontario officials.

Government officials from all provinces charged with the responsibility for children in care met in June 1988 to discuss, among other things, the protocol for exchange of this "alert" information. The officials renewed their commitment to sharing this information on a confidential basis. It was agreed that the alerts would be sent to the appropriate jurisdictions to be shared with the appropriate workers and after 6 months, unless renewed, the alerts would be destroyed.

This issue, along with our report on the use of criminal record checks to screen individuals working with vulnerable people (Ombudsman Public Report No.5), the report of the Badgley Committee on Sexual Offences Against Children and Youth, initiatives in Manitoba and Ontario and tentative recommendations in the Rix Rogers Study on Developing a National Strategy to Combat Child Abuse renewed our interest on the utility of a provincial Child Abuse Registry.

Between 1981 and 1983, our annual reports summarized a dialogue between this office and the ministry about the operation of the ministry's Central Registry of Protection Reports. The registry was a central listing of child abuse allegations, investigative reports, and abusers' names. At that time, concerns identified by this office included:

1. Incomplete information stored on the Registry and a lack of clarity as to who has access to the sensitive and confidential information.
2. An inadequate definition of categories of findings resulting in inconsistencies in classifying protection investigation outcomes.
3. No administrative procedures for the removal of abusers' names from the Registry, even when an allegation was proven to be unfounded. Abusers or suspected abusers were often unaware that their names were on the Registry.
4. No available appeal mechanism for reports classified as "substantiated" and a general lack of information to abusers about appeal procedures.

In January 1984, we were informed by the ministry's then deputy minister that the registry was to be replaced by a Central Index which would record only the name of the abused child and the parents, and at which office the file was stored. At that time, we stated our concern that the proposed Central Index would not include the names of all alleged abusers. We noted that many children are abused by persons who are not the parent and felt that the names of these persons should be recorded.

We urged the deputy minister to consult broadly with public and private child protection agencies prior to making substantial changes to the registry. We felt that this process would assist the ministry in developing better mechanisms to protect children from abuse.

In 1987, the Manitoba government introduced legislation concerning their registry intended to provide additional safeguards for individuals identified as abusers. Abuser and victim registries were established and child protection agencies were required to establish Child Abuse Committees to review cases of suspected child abuse.

In 1987, a comprehensive Review of the Ontario Child Abuse Register recommended that the Abuser Registry be used for screening employees, volunteers, foster parents and others who may occupy positions of responsibility for children. Consent of individuals would be required but if they refused, they may not be considered for the position.

During 1989, this office will continue a dialogue with the ministry about this complex but important issue. We continue to believe that a Child Abuse Registry has the potential to be one useful tool in efforts to combat child abuse. It is also our belief that a registry can be established with the necessary procedural safeguards to ensure fairness and to comply with the provisions of the Canadian Charter of Rights and Freedoms.

7. Private Delivery of Public Services

Last year's annual report dealt at some length with the concept of privatization. It stressed that the government must hold private firms delivering public services accountable for quality by setting, monitoring and enforcing exact standards. Deliverers of such services must be responsible for the quality both to government and to individual consumers. It also pointed out that individuals and firms can express their concerns to the Ombudsman's Office regarding the quality and fairness of public sector actions, omissions, decisions and practices.

It is too early to tell whether effective monitoring and quality control mechanisms have been established for the delivery of public services through private agencies. The complaints we have received to date, rather than involve the question of accountability, have related mainly to the actual privatization process itself.

For example, we received a complaint from an employee of the Ministry of Transportation and Highways who was concerned because the topic of privatization received too much publicity in the ministry. As time went on, we received complaints from a group of highway employees who had to make a decision whether they wanted to stay with the ministry or whether they wanted to work for a private employer; the decision was required to be made almost instantly, and they complained because they had virtually no information available to them.

Another group of privatized employees complained to our office because they were not happy with the refund options available to them regarding the money they had contributed to the public service pension fund.

A group of private forest nurseries complained to us about the process used in the privatization of provincial forest nurseries. This complaint is discussed below.

This office will continue to act as an independent quality control mechanism in the area of privatization, when concerns are brought to its attention. Examples of four cases considered by the office in 1988 are noted below.

A. Nurseries

An association of persons who own forest nurseries complained to us about the process used by the government in privatizing a number of its forest nurseries. The concerns were that public servants had an unfair advantage in the privatization process, that there was no proper bidding process, and that the nurseries were sold to former employees at a price that was below replacement cost. As a result, the newly privatized forest nurseries would have an unfair business advantage over existing private forest nurseries.

We concluded that both the decision to privatize the nurseries and the decision to give some preference to employee groups in the privatization process were legitimate matters of government policy. The question that remained was whether the process used in implementing the government's decision was fair to all those involved. We found that:

- To avoid conflicts of interest, the process of privatizing forest nurseries was completely removed from the Ministry of Forests and conducted by a special privatization group working under the umbrella of the Ministry of Government Management Services.
- As soon as a number of senior employees announced their interest in forming an employee group for the purpose of bidding for the purchase of the nurseries from the government, these individuals were removed from their positions to avoid any real or perceived conflict of interest situations.
- All interested parties, including both the employee group and other prospective purchasers, received identical comprehensive information about the nurseries that were to be privatized. This information included clear statements to the effect that employee groups would be preferred purchasers.

In the end, it was not necessary to exercise preference for the employee group. The objective was to sell all six nurseries, and only by selling the whole parcel to the employee group could this objective be met. No combination of other bids received would have achieved this result. Furthermore, there was enough of a spread between offers received for four nurseries and the employee group's offer for six nurseries to justify acceptance of the employee group's offer.

B. Family Court Counsellors

In 1988, the Ministry of Solicitor General embarked on the process aimed at privatizing family court counsellor services.

Family court counsellors are currently appointed by the Solicitor General and operate under the statutory authority of the *Family Relations Act*. They provide guidance, advice and mediation services to parties who are disputing matters involving the custody, access and maintenance of dependent children. Where a mediated resolution is not possible, a judge may direct a family court counsellor to prepare a report, with recommendations, for the court. Based usually on extensive interviews with the parties to the dispute, their children and other key persons, the family court counsellor recommends the type of custody or access arrangements that will be in the best interests of the children.

Because of our experience in investigating complaints related to family court counsellor functions, we felt that our observations and concerns may be useful to the ministry in considering matters of administrative fairness and quality assurance. We were invited by ministry officials to submit our concerns and perceptions to the Family Services Privatization Implementation Team. The committee agreed to consider our recommendations and to consult with us prior to the implementation of privatization plans.

Some important issues which we have identified include:

1. The quality of professional intervention by family court counsellors, particularly in mediation, will best determine the effectiveness of the service in this difficult area of family law. High professional standards should be set. When mediation is not a viable option, the quality and thoroughness of a family court counsellor's custody as access report will assist the court in making decisions that are responsive to the best interests of children. A thorough understanding of child development, family dynamics and family law is required if family court counsellors are to be effective in their role. When judgment and discretion are required in assessing the best interests of children, fairness is most effectively assured through the professional integrity and objectivity of the family court counsellor.
2. Other specialized supports are often required if the court is to be in possession of the necessary information to make decisions which are in the best interests of children. Ready access to independent psychiatric or psychological assessments may be required, as may the involvement of a family (child) advocate to ensure that the child(ren)'s interests and perspectives are fully considered in complex cases.
3. The time alloted to family court counsellors in preparation of custody/access reports may have a direct relationship to the quality of information provided to the court. A thorough and professional report to court will be cost effective, saving time and perhaps reducing the level of conflict.
4. When a party feels that they have been treated unfairly by a family court counsellor, accountability mechanisms must include access to grievance procedures which may be set out as part of the contractual agreement between the ministry and private contractors. Continued access to neutral, external complaint mechanisms such as the Ombudsman's office should also be ensured.

We look forward to a continuing dialogue with the ministry in 1989 as it plans towards the privatization of family court counsellors.

C. Maintenance Enforcement

The Ministry of Attorney General implemented the *Family Maintenance Enforcement Act* in September 1988. The act applies to all individuals entitled to receive maintenance by court order. Enforcement is carried out by a private sector agency on contract with the ministry, which has established a review procedure for complaints concerning enforcement. The Director of Maintenance Enforcement investigates complaints about the contract agency and assesses how the agency is performing.

An individual representing a professional business firm complained to the Ombudsman about the way in which the privatization contract for enforcement of maintenance orders had been awarded by staff at the Ministry of the Attorney General. The successful bidder had been an employee of the ministry and had run the pilot project for this program prior to the letting of the contract. The individual who called our office suspected that the successful bidder, because of his experience, had in effect been chosen before the contract had been let.

We reviewed the ministry file and had access to all the contract proposals. Ministry staff anticipated that employees would want to bid on the contract. In order to ensure a fair process, guidelines had been developed advising employees that if they wanted to be considered as bidders they must take a leave of absence and avoid contact with those preparing the contract guidelines. In addition, all proposals submitted were scored based on a comprehensive and sophisticated list of categories. We were satisfied that these guidelines were followed and that the process followed had been a fair one. Ministry employees had not been given special consideration.

D. Road and Bridge Maintenance

On October 23, 1987, the Premier announced that road and bridge maintenance would be the first area of government to undergo privatization. The Ministry of Transportation and Highways has taken on the role of monitoring the work and a restructuring process is now in progress. The previous six regions, each with a regional office, have been retained. Within the regions are district offices which are responsible for quality control over contractors' work. Their numbers have been reduced to 28 from 37, with a district manager responsible for each. All of the original district offices remain open and operational but some are now operating as satellites. The Kootenay's regional office in Nelson, for instance, administers the districts of Central Kootenay, Kootenay Boundary, East Kootenay and Selkirk. Nelson district has satellite offices at Creston and New Denver.

Private sector groups bid on 28 contract areas throughout the province. At this writing, 26 contracts had been awarded. As part of the initial contract, each firm was required to offer jobs to ministry employees who previously performed the work being contracted. The jobs carried with them the pay and benefits negotiated by the B.C. Government Employees Union (which still represents them). More than 88 per cent of affected employees have chosen to accept employment with private contractors. Those who chose not to do so received offers of alternative positions within government. Ten employee groups formed their own companies and were contracted for work in their former districts. So far, little has changed. Mostly the same people using the same equipment are maintaining the same roads. In three years, as contracts expire they will be tendered publicly.

It is becoming common practice throughout the province for the public to deal directly with the contractors over maintenance problems because it streamlines the communication process. The ministry, however, encourages the public to bring complaints to its district offices if direct contact with contractors has not resolved them. District offices also provide the public with the name and telephone number of the contracting firm for a district upon request. When complaints concerning the quality of contracted services are brought to the Ombudsman's office, the complainants are assisted in the resolution process through the ministry, or directly with the contractor. If no resolution is achieved, the Ombudsman's office will conduct its own investigation.

8. Consensual Resolution of Public Interest Disputes

Many disputes between individuals and various levels of government involve competing demands for public resource allocations and land use rights. The courts can be very effective in interpreting the law, determining fault and assessing damages. However, the adversarial process is not well-suited to reaching enduring solutions to such public interest disputes between competing yet legitimate interests within and between governments, private individuals and corporations. Alternatives must be found.

Competition between such interests is often miscast as a one-dimensional battle between economic and social interests when, in fact, all of the interests are legitimate and compelling. They are interdependent and require solutions which are flexible, self-regulating, enduring and mutually productive. Failure to reconcile them will be to the detriment of all.

Litigation is often seen as the only way to settle such disputes. Yet the issues are too numerous and complex to benefit from an adversarial process which imposes settlements, drains resources and distinguishes winners and losers. An integrated and consensual process is required which will identify the common interests among the various parties and achieve a result to which all can voluntarily subscribe. Social harmony, political consensus and economic competitiveness are essential objectives in resolving public interest disputes. All are poorly served by an adversarial resolution process.

Litigation will almost always be the least appropriate way to resolve public interest disputes for the following reasons:

1. The expense and delays involved in complex litigation may favour parties with the greatest resources but not necessarily with the highest and most legitimate degree of interest.
2. Private interests will never be the equal adversary of government in litigation, given government's effectively limitless resources, its political and institutional stake in its own policies and its control over information.
3. The merits of many government decisions and actions, both administrative and executive, are non-reviewable in court. Therefore, there is simply no remedy in law to their potential unfairness or unreasonableness.
4. Where litigation succeeds in changing or setting aside government action, the result may simply be avoided by a subsequent change in the legislation or in the process by which an offending decision or action was taken.
5. Government has a harmonizing role in society as well as a regulating one, and it is often unseemly and inappropriate for it to be in court with its citizens. Because of its special responsibilities, government owes a duty of fairness to individuals in society which can go well beyond bare statutory or other legal mandate and responsibility. The courts cannot deal with such fairness issues. Indeed, as soon as litigation commences or is even contemplated, positions harden along legalistic lines and broader fairness issues can get lost.
6. Court decisions are imposed against the will of the losing parties. As such, in public interest disputes, although they may create legal rights they are unlikely to attract the cooperation necessary for continuing enjoyment of those rights. Adverse publicity campaigns, continuing legal challenges, civil disobedience, political agitation and a simple lack of necessary cooperation can eliminate the seeming stability of a court-awarded victory.
7. Courts are poorly equipped to deal with the dynamic character of many public interest disputes. Changing circumstances require flexible responses. Courts seem unable or unwilling to play a monitoring role that will ensure the effectiveness of prescribed resolutions.

The consensual resolution of public interest disputes requires a recognition by all major private and public interests that the best chance of achieving individual objectives will result from the enhancement rather than at the expense of apparently competing interests. This is a building process rather than a destructive one. It exhibits the following major characteristics:

1. While it requires creativity, patience and goodwill, it does not require self-sacrifice. In fact, self-interest is its sustaining force.
2. Because the various interests will value aspects of the public issue differently, resolution packages can be crafted which satisfy each party's major concerns while trading off less vital ones.
3. The interdependence of interests empowers even relatively minor stakeholders to be valued partners in the resolution, rather than bothersome but defeatable opponents.
4. It is a negotiated process, not an adversarial one, which will likely require the assistance of a trusted, neutral facilitator or mediator to ensure free communication, full disclosure and balanced participation.
5. It is essential that all significant interests voluntarily involve themselves in the process, through the participation of a legitimate and authorized representative. Each party must believe that its particular interest will be better served by a negotiated settlement than by an imposed one. If any one party believes it can win a dispute outright, judicially or politically, then the process will not work.
6. The process requires each party to define its objective in positive terms, rather than negatively saying what it absolutely doesn't want some other party to do. By thinking in terms of what it wants to achieve, each group becomes better disposed to accommodate apparently competing interests by concentrating on creative alternatives for reconciling them.
7. Government must show leadership in promoting consensual resolution rather than confrontation. It may be required to fund the mediation, research, resource and representation costs of some or all of the parties to ensure full and effective participation in the process.
8. Because solutions are voluntarily entered into, they will be self-regulating and enduring. Because they have been designed through a process based on openness and respect, the positive relationship will allow flexible adjustment of terms to meet changing circumstances in the future.
9. Business interests will gain from stability and certainty in the exercise of commercial rights, and from an enhanced reputation as good corporate citizens.
10. Special interest groups will play an influential role in designing solutions to difficult public conflicts. They

will be recognized as legitimate participants introducing important concerns to the process rather than strident and absolute positions.

11. Where scientific, technical, legal or other experts are required to advise the process, they will not be engaged to align with particular interests but rather to develop a common set of acceptable assumptions, standards or conclusions on which joint decision-making can be based.
12. The legal profession will undoubtedly play a major role in consensual negotiation as mediators, counsel or expert advisors. More fundamentally, lawyers must be able to redefine the notion of success for their clients. Public interest disputes are often won not through winner-take-all court victories (which are often illusory), or through cost and risk cutting compromises, but rather through voluntary, enduring, mutual-gain solution building.
13. Our overburdened court system would clearly welcome the absence of protracted, multi-party public interest law suits. It may be that judges can assist the diversion of such disputes by appointing or recommending pretrial or mid-trial mediators or masters to work with the parties towards consensual resolutions, with the alternative threat of a costly and inadequate, court-imposed settlement which may fail to meet any party's major interest.
14. Consensual resolution requires courage from the participants. Simple self-interest confrontation is straight-forward in that each representative feeds off the support of his or her interest group. However, it takes boldness and skill to persuade one's own interest group to support another group's objectives in its own enlightened self-interest.
15. Fundamentally, consensual resolution is a reasoning process rather than a coercive one. As such, it is immensely more powerful. A reasoning process stimulates a voluntary change in the way of thinking which endures into the future, to the benefit of all parties. By building understanding and respect among the parties, it generates productive energy. In contrast, a coercive process drains energy from all parties and produces a weak outcome by leaving embittered and resistant losers.

As our communities become more pluralistic, as our natural resources become less abundant, as society becomes more interdependent and as international economic competition becomes more intense, it is clear that political polarization, public interest litigation and industrial confrontation are not the answers. We simply cannot afford, in political, social or economic terms, the debilitating waste of energy and goodwill that such disputes cause or the cost and burden of government regulation and judicial intervention required to control them.

Instead, we must creatively and realistically identify our individual self-interest as being inextricably linked to that of other interests in society. The consensual resolution of public interest disputes requires maturity and clear thinking but it has the potential to promote social harmony, political stability and economic growth in an otherwise complex and threatening environment. Such initiatives will need the active support and participation of government, the legal profession, the judiciary, universities, business and special interest groups if public attitudes and practices are to be steered away from litigation and towards consensual resolution, particularly in the complex area of public interest disputes.

9. Integrated Resource Management: The Issue is Fairness

Principles of Administrative Fairness

In the annual and public reports produced by this office, the common goal has been to articulate the core elements of fair administration.

The following elements, have been distilled from the experience of this office in attempting to resolve land use and resource allocation disputes. They are, in essence, foundational aspects of administrative law, with some specific modification appropriate to serve their application within the context of resource management and conflict resolution:

(a) In matters affecting the rights and interests of provincial residents, fairness, certainty, and predictability are best served through a comprehensive legislative foundation. Where it is foreseeable that the rights of individuals and communities will be in conflict, the legal framework should be established by statutes and regulationsn to which interested parties can refer in planning their affairs or resolving their disputes. Government performance and accountability then becomes measurable.

(b) An opportunity for meaningful participation must be provided to those individuals or groups whose interests are affected, directly or indirectly. Meaningful participation means that individuals, groups, local government or any other party with significant and legitimate interests will be recognized in the planning, implementation and conflict resolution processes. It implies that their representations will receive careful consideration and will be accorded due regard consistent with the importance of the individual's interest. In other words, a duty is placed upon the decision maker, insofar as is reasonably possible, to appreciate fully the significance of and the foundation for the various individual or group interests.

(c) A structured framework is required for the exercise of discretion. The structuring of administrative discretion in decision-making is essential to assure public confidence and is most effectively achieved through the application of objective assessment criteria which are set out in legislation, regulations, and published official ministry policy documents. When administrative discretion is exercised in areas where potential conflict exists between individual, industrial and public interests, there can be suspicion that either the "vested interests" or the "squeaky wheels" have inordinately or improperly influenced the system for decision-making. The publication of clearly defined criteria by which discretion is to be exercised is essential, so that the public can have confidence that similar situations are treated consistently and different situations are treated individually.

(d) Policy guidelines, rules and regulations issued by ministries must be clearly defined in plain language and publicly available. Public confidence is bolstered when the public knows and understands the decision-making process.

(e) Adequate and appropriate reasons for significant administrative decisions should be provided in written form, whether required by law or not. This enables parties to measure performance against policy accurately. Individuals are able to determine clearly the basis upon which the decision was reached and are less likely to challenge the decision, particularly if the reasons provided make it clear that the available evidence was considered fairly. The decision that is made and explained is also more likely to withstand later scrutiny by an independent review agency or tribunal.

(f) Internal review procedures that allow an affected individual to understand clearly the basis for the original decision and to advance opposing views quickly and efficiently to an individual who has power to act are required. They ensure that apparent errors, such as incorrect or inappropriate interpretation of policy and regulatory requirements, are either quickly corrected or openly justified to the satisfaction of all parties. Whenever administrative decisions are made which are not consistent with the desires of parties who have legitimate interests, there exists the possibility of suspicion and resentment that the process was biased in favour of the party whose interests won out. An effective internal review system in which individuals can participate and by which the rationale for a decision can be made known is important in avoiding or dispelling such suspicions.

(g) External review procedures (appeals).An independent, statutory appeal process which is available without excessive cost is a vital aspect of assuring public confidence in the integrity of any process which regulates fundamental interests. The appeal body should be expert in the technical area being administered and, as well, should have at least one member experienced in the principles of administrative fairness. The appeal body must be truly independent with wide powers to hear evidence, call witnesses, and, if necessary, to substitute its decision for that of the administrative agency in appropriate cases.

(h) An integrated, inter-disciplinary, and inter-ministerial planning process, based on a specific enabling statute and incorporating a long-range conception of the physical areas being administered or managed and which makes ample allowance for meaningful public participation at the beginning of the land allocation process, is basic to the achievement of administrative fairness. Its application should extend not only to maximizing benefits from the development of a particular industry but also to avoiding, rather than the more difficult and time-consuming resolving, of conflicts. Integrated planning allows each party to participate in the decisions which will affect its interests. In the case of industrial or commercial development in areas where such development has previously been rare, the planning component becomes critical. The time period allowed for publication of an application for Crown land, or even a public hearing, can be entirely inadequate for communities to address properly issues and concerns which may extend over the life of the industrial or commercial project. Since most developments of this nature are established with a long-term private plan, so also should the local community be able to engage in long-term planning on a cooperative basis with provincial authorities. This will help to ensure that industrial developments on Crown land do not occur without the careful consideration that a planning process can provide, by way of sufficient lead time and a measure of informed anticipation.

(i) An efficient mechanism for the independent assessment of environmental or social impact is needed in instances where the ability of the parties to make accurate impact predictions is limited and the magnitude of an unexpected adverse impact may be significant. Administratively fair systems of impact assessment should be directed at the unbiased gathering of the best available data and predictions, which can then be applied to the critical questions of where, when, how, and whether or not to proceed with a project. Integral to the process and useful in enhancing its cost-effectiveness is the establishment of a threshold level at which a social or environmental impact assessment should be conducted.

A process to be avoided is one where experts are retained to present data in a fashion which will advance only the interests of their client. Where such a presentation is made in a judicial or quasi-judicial environment, the best answer may have to be distilled from conflicting evidence; this is the heart of the adversarial system. A more satisfactory initial approach, one more likely to secure a lasting resolution, is contained within the concept of consensual dispute resolution. In its most basic form, it requires that opposing experts be required to create a consensus among themselves as to the accuracy of available data, the questions that remain unanswered and the appropriate approach to answering those questions.

Any system of environmental or social impact assessment should be, as far as possible, time and cost efficient for all parties involved. If such assessments become a barrier to participation, the ultimate goal of administrative fairness may be defeated and projects of merit may be abandoned because the proponents cannot afford to risk inordinate expense in an application process which might fail. Alternatively, opponents wishing to raise legitimate concerns and establish their case might not be able to finance the investigation necessary to produce the required evidence and a potentially damaging development might proceed unchallenged.

Application of Principles: Integrated Resource Management

Integrated Resource Management (IRM) is a simple notion which nonetheless presents a formidable challenge in implementation. As the concept is understood by this office, and analyzed as a matter of administrative fairness, it means a form of management which would include the following components:

a) Fundamental priorities in the long-range development of specific areas would be identified by the provincial government after diligent consultation with local governments and community interests.
b) The priorities will find expression in enabling legislation which will supercede the jurisidictional division of individual ministries.
c) Both geographic inventory and planning systems will emphasize inter-ministerial and local government involvement to the maximum possible extent.
d) Individual projects which have the potential for significant impact, whether environmentally or on other individuals or communities, should be subject to hearings which will, among other things, establish the degree to which the project is consistent with stated development priorities at both the local and provincial level. The hearing should also provide a meaningful forum for the determination of essential facts and data sufficient to allow the most accurate cost-/benefit determinations.
e) As noted earlier, a system for the resolution of disputes (which can often occur when disparate groups and government are integrated in a planning and management process) should be put in place as an alternative to costly and often counter-productive litigation. Where mechanisms such as consensual dispute resolution are not adequate to resolve specific questions relating to land and resource use, an appeal to an expert, independent, statutory tribunal should be available. As a last note, there is, or should be, a basic relationship between IRM and sustainable development: in essence, sustainable development (as the Brundtland Report to the United Nations defined it, "development that meets the needs of the present without compromising the ability of future generations to meet their own needs") should be the goal of IRM. Conversely, IRM holds the promise of being a vehicle by which sustainable development can be achieved. In the opinion of this office, it is no accident that development which is sustainable will be, at the same time, development which occurs in accordance with the principle of recognition and reconciliation of potential conflict; in other words, development which is fair to all concerned.

10. Access to Information

The Ombudsman's office deals with issues of privacy and access to information on a regular basis. While comprehensive legislation does not exist in B.C. to deal with these issues and it is not the role of the Ombudsman to advise the government on legislative policy, this office does have responsibility to review the administrative practices of provincial government institutions, including practices which deal with privacy and information.

The federal government has specific legislation setting out the relevant principles and processes involved in the gathering and use of information by federal institutions. Information and privacy commissioners act as independent, specialized Ombudsmen to oversee compliance with this legislation. In Ontario, the *Freedom of Information and Personal Privacy Act*, 1987 provides similar rights and protections under the direction of an independent commissioner. In New Brunswick and Manitoba, access to information legislation specifically names the provincial Ombudsman as having oversight responsibility.

In B.C. the Ombudsman's office has addressed the issue of fair administrative practices related to privacy and information in various recent public reports, including those dealing with criminal record screens (Public Report No. 5), Workers' Compensation (Public Report No. 7), Abortion Clinics (Public Report No. 13), the Provincial Capital Commission (June 1988), AZT Funding (April 1988), Pesticide Regulation (Public Report No. 11) and Aquaculture Regulation (Public Report No. 15).

As a matter of fair administrative practice, there is a requirement for clear, reasoned and published criteria governing public access to government information and processes. As a general rule, public information should be available to the public. The exceptions should be few in number and subject to discretionary disclosure if there is no reasonable expectation that disclosure would result in injury. Trade secrets or confidential business information should be exempted from disclosure, except where specific information is severable, or when the public interest regarding health, safety or environmental protection overrides private commercial interest. Exceptions are also required in cases of criminal investigation, where disclosure would be contrary to law or where the Cabinet decision-making process is involved. Perhaps nothing is more disarming of public controversy than openness. Confrontation surrounding public interest disputes is often generated by extremes which are able to gain influence over more moderate elements in society in a climate of suspicion created by secrecy.

Personal information, on the other hand, should be stored and used only when authorized and only when the individuals concerned know what information about them is being retained. Those concerned must have the opportunity to see and to correct the information on file about them, and this type of information, subject to limited exceptions dealing with police investigation and security, must be kept confidential.

The Ombudsman's office will be continuing its work with provincial ministries and institutions to promote the introduction of these practices.

11. Appeal Systems

As part of our systems initiatives, we are currently providing advice to two ministries on the design of a fair appeal mechanism, at their request.

The Ministry of Advanced Education and Job Training has entered into an agreement with the federal government concerning cost-shared services of the Vocational Rehabilitation of Disabled Persons (VRDP) programs. Under that agreement, the province is required to establish an independent appeal procedure for individuals or their representatives on decisions of elgibility for VRDP services. Ministry representatives asked for a consultation with the Ombudsman's office on the requirements of natural justice and administrative fairness in an appeal system. In addition, they were concerned about the accessibility of an appeal mechanism to persons with disabilities.

To be accessible, the appeal mechanism should be available in local communities and easily understood. Knowledge of the mechanism can be gained through the use of brochures and advertising most appropriately given at the time a person applies for the program.

Natural justice and administrative fairness require that appeal mechanisms meet a range of criteria, depending on consequences of the appealed decision. In the case of vocational and rehabilitation services, decisions can impact on the liberty and security of the person. Therefore, under section 7 of the Canadian Charter of Rights and Freedoms "fundamental justice" must be respected if such services are to be refused. An appeal system that would comply with fundamental justice would be required by our office and the courts to include the following:

1. An independent decision-maker. While the ministry administering provincial programs may have internal appeal mechanisms, fundamental justice would require, in the circumstances, an independent tribunal. Ideally, the trbiunal would be mandated by statute and have decision-making authority.
2. Notification. The person adversely affected by the decision of the ministry should be notified of its decision and the reason for it, his or her right of appeal and any time limitations in which to exercise that right.
3. Notification of the case the appellant has to meet and the information upon which the ministry based its decision.
4. The right to be represented by counsel or an advocate.
5. A right to a decision in a timely manner.
6. A right to reasons for that decision by the appellant body.

The appeal body itself could be made up of one member or a number of members, either lay people or individuals with special expertise. The appeal mechanisms under the *Guaranteed Available Income for Need Act* provide a useful model of an independent appeal mechanism that can function well at a local level. Its membership is made up of a person appointed by the appellant, a person appointed by the ministry and a third person appointed by the first two. It is a quick and efficient model to deal with the issues somewhat akin to those that will be dealt with in the VRDP.

We commend the Ministry of Advanced Education and Job Training for arranging to share this information with a number of the advocacy groups representing the disabled who may be utilizing this program. Not only was there willingness to share this information but also to receive recommendations from those groups on behalf of those they represent.

The Ombudsman's office has also been consulted by the Provincial Apprenticeship Board over the procedures used by it in fulfilling its statutory appeal function.

Part II

Case Summaries

Selected case summaries are detailed under the headings of each ministry and other authorities. The cases are selected for their individual interest or representative significance.

Many of the cases reveal, in the course of investigation, services, procedures and appeal processes perhaps not widely known but already available to the general public within the existing policy of the various ministries.

Tables preceding the case summaries within each authority detail the total number of cases and their disposition. It should be noted that the volume of cases does not necessarily reflect the amount of time required to conclude their investigation. Time spent on each case varies considerably.

Where investigations are shown in the tables to have been "Declined", this usually indicates that internal remedies have not yet been pursued by the complainants.

Ministry of Advanced Education and Job Training

Complaints against the Ministry of Advanced Education and Job Training most often involve student loans; not necessarily that a person has been denied one but that there are problems when the time comes for repayment.

Many students who complete their studies cannot find jobs right away. Loans, however, can be due for repayment by monthly instalment soon after studies end. In such cases, we usually receive a phone call after the loan is several months in arrears, no effort has been made to contact the ministry about an alternate repayment schedule, and a person has been contacted by a debt collector. At that time, a request may be made for the entire amount to be repaid which is often financially impossible.

We assist the student to meet with the ministry debt collector and work out a debt repayment schedule. Once that meeting takes place, a satisfactory repayment plan can usually be negotiated.

Resolved	22
Not resolved	0
Abandoned, withdrawn, nonjur:	7
Not substantiated	8
Declined, discontinued	10
Inquiries	9
Total number of cases closed	56
Number of cases open December 31/88	27

99 cent student loan a mistake

A young woman told us she received two notices from a bank to pick up a student loan, but that the notices indicated the loan was for 99 cents. The notice referred to the B.C. portion of her student's loan. The major portion of the loan was through Canada Student loans and B.C. "tops up" the amount to the individual students maximum eligibility.

The notice indicated the woman was to return a further form to obtain it, at a cost of 37 cents, with the B.C. portion of her student loan netting out to 62 cents. She contacted the Ombudsman's office.

We called the Ministry of Education to see if the figures the complainant had received from the bank were correct. A review of the file on the computer indicated that the bank had put the decimal point in the wrong place. The student was eligible for $99, not 99 cents.(CS88-1)

Husband's income bars loan

A woman complained to the Ombudsman's office when her application for a student loan was rejected. She claimed the decision was based on her husband's income and that this was unfair and discriminatory. Although she was living with her husband, they had always maintained separate finances and he was not assisting her financially with her education. She wanted to be assessed for a loan solely on the basis of her own income but the request had been refused by the both the federal and provincial loan agencies.

The guidelines for eligibility for student loans are set by Canada Student Loans and the provincial student loan agency follows those guidelines as well.

The Canada Student Loan guidelines are based on family income. If an applicant is part of a family unit whose total income exceeds the guidelines, they will not receive a loan. However, if the applicant has dependents and a total family income which comes within the guidelines, the dependents' financial needs will be calculated in the family unit when the loan amount is assessed.

Since these guidelines appeared to be applied consistently, we did not substantiate this complaint.(CS88-2)

Change meant no scholarship

We received a complaint about the Ministry of Advanced Education and Job Training's decision to cancel the existing scholarship program and to replace it with an equalization program.

The scholarship program was based on scholastic achievement. The equalization program was based on financial need. The complainant would have received scholarships under the old program due to her academic achievements but would not be eligible for equalization. She found this unfair.

Upon investigation, we could not substantiated this complaint. The scholarship program was discontinued after reasonable notice had been given to all voucher holders. The needs-based program, universally applied to all students, was a response to difficult economic times for many students and their families.(CS88-3)

Early grad missed loan program

We received a complaint that the ministry would not consider the complainant eligible for the latest loan remission program. The complainant took an accelerated program and managed to complete in three years a course that would normally take four years. The complainant had a full student loan debt load of $21,000, the same as if she had attended university for four years. She graduated in 1986. In 1987, a new program was initiated to assist students who had accumulated student loans over $12,000. The program made it possible for students who graduated in April 1987 or later to pay back only the first $12,000 of their loans with the government assuming the rest of the debt. This program was implemented to prevent students from graduating with an unmanagable debt. The student would have graduated in 1987 if she had taken the usual four years to complete her studies and so she wanted to be eligible for the new loan remission program.

We were sympathetic to the complainant but could not fault the ministry for denying her request. The eligibility criteria for the new loan remission program were clearly for students graduating in 1987, and she did not meet the criteria. She was eligible for the loan remission program for 1986 graduates but she would have to pay back substantially more than $12,000.(CS88-4)

Out of province, out of loan

Eligibility for British Columbia student loans is based on financial resources, residency and location of the course of study. If a student does not fit the criteria in any one of those areas, the application for the student loan is usually rejected.

One man complained to the Ombudsman's office that he had been turned down for a student loan because he had not resided in the province the required length of time. He had been in the armed forces and stationed out of the province but he still considered B.C. to be his primary residence.

The man had been found ineligible on his first application. We informed him of the appeal process and suggested the appeal might get more individual consideration.(CS88-5)

Job Training

As in past years, our office received few complaints against this branch. For the most part, those we do get involve persons who, for one reason or another, have a problem obtaining some type of an upgrading course or an apprenticeship qualification or on the other hand, holding onto the qualifications they have. The case outlined below is a typical example of our involvement.

Enquiry leads to rehab courses

A person was promised training by a ministry vocational rehabilitation services (VRS) consultant but the training never occurred. The person subsequently contacted the Ombudsman's office.

We contacted the Job Training Branch's area manager and requested that the branch review the situation. The manager arranged for the appropriate records to be checked at both Vocational Rehabilitation Services and at the local Ministry of Social Services and Housing office, where the complainant was receiving income assistance. No record was found of either self-referral or agency referral on behalf of the complainant. As a result of the review, however, the Ministry of Social Services and Housing formally referred the person to Vocational Rehabilitation Services for a possible sponsorship. We learned later that he was attending VRS-sponsored courses at a community college.(CS88-6)

Ministry of Agriculture and Fisheries

Though we receive few complaints against this ministry, our involvement covers a variety of subjects, reflecting the broad range of responsibilities carried by Agriculture and Fisheries.

Aquaculture is by its nature an inter-disciplinary enterprise which creates significant administrative challenges. The ministry plays the lead role in the coordination of initiatives. The recommendations in Public Report No. 15, detailed in the introduction to this report, were given to a steering committee which will act as liaison and coordinating body for all of the ministries involved, including Crown Lands, Regional Development and Municipal Affairs.

The role of marketing boards and the function of the B.C. Milk Board are issues which have recently sparked public debate. Marketing boards have the authority to oversee the production, processing, sales, marketing and distribution of agricultural commodities. They are under the jurisdiction and supervision of the British Columbia Marketing Board created by the *National Products Marketing Act*. Under that legislation, a person aggrieved or dissatisfied by an order, decision or determination by a marketing board or commission may appeal to the provincial board within 30 days. A decision of the provincial board is appealable within 30 days to the Supreme Court on a question of law.

The B.C. Milk Board is not part of the marketing board system. It is governed by the *Milk Industry Act*. There is no independent appeal process available to a person aggrieved or dissatisfied with a decision of the Milk Board. The only recourse at present is to ask for a formal hearing of the Milk Board itself or to appeal to the Supreme Court on decisions related to licensing or errors in law or jurisdiction.

While it is not within the mandate of the Ombudsman to make recommendations on the merit of a supply management system, it is within his mandate to investigate complaints regarding the administration of regulations and policies to ensure that there is fairness and consistency in their application. We are especially concerned that people affected by decisions of the boards are fully apprised of the policies, reasons for decisions, any available internal reviews or statutory appeals.

In most complaints against marketing boards, the complainant had a possible remedy available or a statutory right of appeal. Our office may only investigate cases when the person has exhausted all other remedies or appeals. Some of the Milk Board complaints raised serious concerns, however, and the outcome of several court cases pending will determine whether there will be an investigation into these issues in 1989.

Resolved	0
Not resolved	0
Abandoned, withdrawn, nonjur:	0
Not substantiated	2
Declined, discontinued	0
Inquiries	4
Total number of cases closed	6
Number of cases open December 31/88	25

Woman suspected bias on 4H committee

A leader in a 4H Club had a falling out with other club leaders. She decided to start a new 4H Club with the assistance of other adults but this required the official approval of the provincial 4H organization. Approval for the proposed club was denied and the woman appealed her case to an arbitration panel convened in accordance with the 4H constitution and written procedures for conflict management.

The woman expressed concern to the Ombudsman's office that the notoriety of her dispute with other members of the 4H Club made it impossible for the deliberations of the provincial 4H organization's arbitration committee to be fair and unbiased. The lead facilitator for the arbitration committee was an employee of the Ministry of Agriculture and Fisheries and was designated as a supervisor in the 4H Program of the Rural Organization and Services Branch.

We reviewed the process, including the practice of taking evidence from opposing sides in private as opposed to an open hearing, and compared it with the cost, expense, and perhaps ill-will generated by a more public process. The report of the arbitration committee detailed the history of the dispute and the nature of the conflict, made observations and conclusions about the evidence gathered, and included non-binding recommendations and binding decisions. The binding decision allowed the complainant to be involved in a helping role beneath that of registered leader and restricted her from becoming a leader for three years.

At first glance, the decisions appeared to have elements of an almost penal nature, but the committee was empowered to make such decisions, where appropriate, for the continuing well-being of the 4H Club. We concluded that, in the particular context, fairness could be adequately achieved so long as reasons for the committee's conclusion were detailed and clearly expressed.

While finding the complainant's concerns in general to be unsubstantiated as to administrative unfairness, we nonetheless made a recommendation that in future all members of the arbitration committee be independent of the problem being reviewed. While the 4H supervisor who acted as committee facilitator in this case had little or no direct exposure to the conflict, there remained the perception of potential bias due to his professional full-time association with the organization.

Current techniques of consensual dispute resolution were also recommended as being potentially valuable for resolving emotional issues, where personality clashes require tremendous skill to overcome. Consensual dispute resolution techniques are discussed in Part I of this report.(CS88-7)

Ministry of Attorney General

A respectful working relationship exists with the Ministry of Attorney General. The division of the ministry's former responsibilities by the establishing of the Ministry of Solicitor General presented no apparent difficulties to the public.

Resolved	94
Not resolved	0
Abandoned, withdrawn, nonjur:	41
Not substantiated	39
Declined, discontinued	25
Inquiries	86
Total number of cases closed	285
Number of cases open December 31/88	60

Crown, not victim, decides on charges

The victim of an assault contacted our office after she decided that she wanted the charges dropped against her assailant, with whom she had a close relationship. A trial date had been set, but the woman believed that because she was the assault victim, she could decide whether or not her assailant is prosecuted.

Under our criminal justice system, it is the Crown who prosecutes a person charged with a criminal act. The Crown operates under the assumption that, while the victim is the person most obviously harmed, all of society has an interest in ensuring that a criminal is prosecuted. Once the police lay a charge, it is up to the Crown, not the victim, to decide if there is sufficient evidence to proceed.

The Crown decided in this case that the evidence of an assault was straightforward and that it should proceed with the charges. We provided her with information about the court process and ensured that she met with Crown Counsel to discuss the court proceedings.(CS88-8)

Delayed return of financial evidence

A man complained to us that Crown Counsel had delayed returning $1,300 to him. The money was in his possession when he was arrested and Crown Counsel retained it as evidence for trial. All charges and court proceedings were complete by April 19 and yet on May 6, he did not have his money.

We received the man's permission to contact his lawyer to verify his information. We found that the lawyer had received the money and was in the process of forwarding it to him. We passed along the information to the complainant and by May 10 he had received his money.(CS88-9)

Youth sent to Oakalla by mistake

A judge ordered an 18-year-old ward of the Ministry of Social Services and Housing to serve his sentence at a wilderness youth camp but he was sent to Oakalla prison by mistake. The youth's social worker came to us, unsure of whether the mixup occurred in Court Registry processing inaccurate papers or in Sheriffs Services transporting the youth.

We were pleased to obtain a speedy resolution to this problem. Once it was realized that the youth had been taken to the wrong jail, steps were taken immediately to remove him from Oakalla, where he had been for three days, and send him to the wilderness youth camp. All branches of the Attorney General's ministry cooperated to have the youth moved. The Court Registry acknowledged that the error likely occurred when a legal document, called an Information, was photocopied before the sentence to a wilderness youth camp was included. The court administration sent a letter of apology to the youth.(CS88-10)

On Land Title office hours

We received a complaint that the Land Title office hours were inadequate to meet the demands of the public. The complainant also expressed doubt that the staff worked "full" days. We learned that the public hours, 9 a.m. to 3 p.m., are explicitly stated in the *Land Title Act.* The Land Title office staff work the same hours as other government employees, from 8:30 a.m. to 4:30 p.m., but they use the non-public hours to ensure that all information received about a title is posted the same day. We closed this complaint as unsubstantiated.(CS88-11)

Court time claim repaid by court

A man received a judgment against him in a small claim court case. In the court action, the claimant had included compensation for wages lost while attending court to obtain the judgment.

After paying the amount ordered by the court, the man found out that in small claim court, wages for court time are not compensable. He returned to the court registry and was told his only recourse was to ask the claimant to give back the amount claimed for court time. The man then complained to the Ombudsman's office.

We contacted the court registry and staff agreed to reimburse the complainant once proof of the overpayment was shown. The registry also agreed that its staff would attempt to collect the excess from the claimant. We were able to close this file as resolved.(CS88-12)

Getting to the church on time

A woman engaged a lawyer to submit divorce documents to the court registry and began making arrangements to remarry out of the country. She believed that the divorce would be processed well before her new marriage date and was very upset to learn that it might not be finalized in time. She contacted the Ombudsman's office, blaming the court registry for the delay.

When we contacted the Court Registry, we learned that the complainant's own lawyer had delayed submitting the documents more than three months. Because of her unique circumstances, the court administrator agreed to assist the complainant with her application. She was pleased with this resolution.(CS88-13)

Holiday hearing foils accused

After a man was accused of a traffic offence, he was scheduled for a court appearance. The date written on his ticket (which was also his court summons), turned out to be a statutory holiday. When he went to the courthouse with the intention of pleading not guilty, he found it closed. He made no further enquiries at the time but found out after several months that because he had not appeared in court at a hearing held the day after the holiday, he was deemed to have conceded guilt and was given a fine. While there was no indication of it on the ticket, under the *Interpretation Act*, a hearing scheduled for a statutory holiday is always rescheduled for the following day. The complainant could have obtained an extension of the appeal period if he had enquired earlier but unfortunately, he had waited too long.(CS88-14)

JP's authority questioned

On the back of a traffic ticket, a man read that he was entitled to a court hearing before a provincial court judge. But when he appeared at his hearing, he discovered that a Justice of the Peace presided over the court.

The man was convicted of the traffic violation at this hearing but complained to the Ombudsman's office, claiming it was improper for a Justice of the Peace to sit as a provincial court judge. He thought his conviction should be overturned on that account.

In our investigation, we discovered that a Justice of the Peace has legislative authority to sit as a provincial court judge in certain matters, including traffic violations, and we could not substantiate his claim.(CS88-15)

Change of trial venue sought

A man scheduled for a trial in northern British Columbia came to us to see if we could help him get his trial moved to a location near his home in the south of the province. He thought the cost of travelling to the scheduled court was prohibitive. Although he could have the matter transfered if he pleaded guilty, he felt he had a reasonable defence and was unwilling to plead guilty and pay a substantial fine.

The Crown had already denied his request. We advised the man that the decision to waive a charge from one region to another within B.C. rests with the Crown Counsel in whose jurisdiction the charge originated. It is the public who finances the costs of criminal trials and, if several witnesses required by the Crown live in the original jurisdiction, it rarely changes the location because of the cost involved in relocating the witnesses.

We suggested that the complainant discuss the matter with a lawyer and told him that a formal application for a waiver could be submitted if the circumstances warranted.(CS88-16)

Office of the Public Trustee

The Public Trustee has a broad mandate to protect the well-being and financial interests of persons who cannot protect themselves. Among other responsibilities, the Public Trustee and his staff manage the affairs of many persons who have become mentally incapable. These persons are then known as patients and their affairs are handled by a committee.

The Public Trustee may become committee of a person who has been certified or judged to be incapable where no other person has sought this appointment or where there is a dispute about which family member or friend should assume this responsibility. In other cases, the Public Trustee is not appointed committee but nevertheless has a statutory duty to review the private committee's handling of the patient's affairs.

Disputes about the patient's best interests sometimes arise between persons who are close to the patient or between these persons and the Public Trustee. Such disputes can be difficult to resolve and have resulted in complaints to this office. In these cases, particular care must be taken to ensure that the interests of all affected persons are considered. Clearly, the paramount consideration is always the best interests of the patient.

A significant number of complaints to this office about the Public Trustee involve delay or problems with communication. Response by the Public Trustee's office to these complainants has invariably been good.

In early 1989, a short-term communications audit was inititated by the Attorney General's ministry, to address communications problems between the Public Trustee's office and members of the public. A number of changes to facilitate better communication are anticipated as a result of this report. However, our involvement with the Public Trustee's office suggests that understaffing is an underlying cause of communication problems.(CS88-19)

Son seeks deceased father's effects

An American man died while staying in a Vancouver hotel. Next of kin were not immediately discovered and so the Public Trustee had collected the father's belongings. Because some were soiled with body fluids when the man died, they were destroyed for health reasons. A short time later, next of kin were discovered, all in the United States. A son arrived in Vancouver and was given his father's belongings. After being told that some of his father's clothes were destroyed, he went to the American consulate in Vancouver which facilitated his complaint to the Ombudsman that the Public Trustee had destroyed articles of his father's clothing and that the rest had not yet been returned.

We found out that the only clothing destroyed were shoes and socks and that these were destroyed before the Public Trustee's office knew of a relative able to identify and claim the deceased's belongings. The rest of the father's personal belongings were returned to his son.(CS88-20)

Payment delay reasonable time period

We receive frequent complaints about delays in the release of funds by the Public Trustee. However, not all can be substantiated as unreasonable.

For example, a person who requested funds administered by the Public Trustee contacted us after a few weeks to complain about a delay in releasing the money. When we enquired, we found the process to release the funds was well underway. A few weeks after contacting us, the man received his cheque, less than 30 days from the date of the request. For a busy administrative office, this is a relatively short time, but for the person in need, it can be a desperately long wait.(CS88-21)

Anger at Trustee misplaced

A woman became mentally incapacitated and was hospitalized. The Public Trustee was appointed to look after her affairs. Since the woman lived with her son, the Public Trustee officer asked the son to inventory her belongings which were combined with his in the apartment they shared. Her belongings were to be moved into storage in the care of the Public Trustee. Concurrently, this man was moving out of the apartment and had moved both his mother's and his own belongings onto a moving truck when police arrived to seize everything.

The man contacted the Ombudsman's office, angry because he believed the Public Trustee had initiated or authorized the seizure. When we investigated, however, we discovered that the seizure had been initiated by the landlord when he saw the man loading the truck. He was acting on information he had received from other members of the family about the man's intent with respect to his mother's possessions.

Once apprised of the situation, the Public Trustee helped the complainant get the possessions released and moved his mother's belongings into storage. The Public Trustee was also able to assist the complainant in moving into smaller quarters.(CS88-22)

Inventory system refined

Because of a complaint about the mismanagement of a client's goods and belongings by the Public Trustee, we made some suggestions for changes.

As a result, the Public Trustee's office now has electronic communication with its trust officers that helps to minimize delay, define work-in-progress more accurately, and provide complete file documentation. Public Trustee warehouse staff now have a system of inventory records that includes a description of the condition and a list of all serial numbers of mechanical and electronic goods.

We also asked the Public Trustee's office to consider expanding its policy on independent appraisals, offering a client's next-of-kin or close friend the option to be present at the inventory and having two staff present at all inventories. This last suggestion is now followed if staff is available or the inventory appears to be contentious.(CS88-23)

Ministry of Crown Lands

Crown Lands became a new ministry in 1988 with a mandate for the management and allocation of public lands (including foreshore) in the most beneficial way to ensure access for industry, commerce, settlement and conservation uses. A major area of this office's work in 1988 involved the report on aquaculture, a multi-interest investigation addressed in detail within this report (see page 17)

Resolved	6
Not resolved	0
Abandoned, withdrawn, nonjur:	4
Not substantiated	14
Declined, discontinued	6
Inquiries	
Total number of cases closed	30
Number of cases open December 31/88	25

Tariff issue matter for court

The Ombudsman's office received two complaints that the tariff schedule of minimum fees set by the Corporation of B.C. Land Surveyors was a form of price-fixing or restrictive trade. The complainants felt that in the spirit of free enterprise, a minimum fee schedule was unfair. The two had already received temporary suspensions and monetary sanctions from the professional association.

The Land Surveyor Act gives the Corporation of B.C. Land Surveyors the authority to enact bylaws and set tariffs for services. On the other hand, federal legislation, particularly the Competition Act, is aimed at preventing undue restriction of competition in "the manufacture and production of a product" or "to enhance unreasonably the price thereof."

We decided that this issue was better put before the courts as it involved the relationship between federal and provincial legislation. The complaints were forwarded to the Ministry of Forests and Lands (as it was known at that time) where responsibility for the administration of the Land Surveyors Act lies and to the Corporation of B.C. Land Surveyors. Shortly after, one of the complainants took the issue to the Supreme Court of the province and eventually had the sanctions overturned with full costs awarded to him.(CS88-24)

Fee charged in error refunded

A man complained to the Ombudsman's office when he did not receive an acknowledgment of a $650 payment to the ministry. After investigation, he got his money back instead.

The man had requested permission from the ministry to have heavy machinery use the foreshore to gain access to the shoreline of his property to do erosion-prevention work that had been sanctioned by the ministry. In response, the ministry had requested a fee of $650, which the man paid without question.

When the man complained to us about the lack of a receipt, we knew the circumstances because of a previous investigation on adjacent property. We recognized that the ministry had charged him for a foreshore lease; we also knew such a lease was not required in his situation.

When we contacted the ministry, staff confirmed an error had been made in interpreting the request for "permission" to traverse the foreshore, which is given without cost, as a "request for a foreshore lease" which is subject to the fee. The delay in acknowledging payment was an oversight. The $650 was immediately refunded.(CS88-25)

Crown lease rent hike a shock

A man leased waterfront recreational property from the Ministry of Crown Lands. During 1988, he learned his annual lease would be increased by 400 per cent. He regarded this sudden increase as outrageous and viewed it with suspicion because it occurred at the same time as the ministry was instituting a program for the sale of recreational lots. It was felt exorbitant rent increases were being used as a lever to force lessees to purchase the property which they had formerly leased.

Even though there had indeed been a 400 per cent rent increase, we could not substantiate the complaint. The increase was a result of several factors. For the most part, recreational property owners had enjoyed a remarkable bargain over the years. Annual lease fees were exceedingly low, a fraction of the cost of comparable property in the private market.

The ministry program had two aspects:

☐ to enable the Crown to get out of the business of being landlord and provide fee simple title to recreational properties at a price that reflected an adequate return to the province for the disposition of Crown resources and,

☐ to ensure that lease fees charged for property that remained in the hands of the Crown were comparable to what would be sought in the private market.

Therefore, after the expiration of the period established in the standard lease agreement, the province removed the $400 per year rent ceiling and increased the rent to an annual payment of three per cent of the assessed value of the property, up from two per cent. A recent assessment by the British Columbia Assessment Authority increased the listed values in some cases by 100 per cent, since many had not been assessed for some time. That meant many leases rose even more than they would have under the percentage increase alone.

While the result was a rude shock to many lease holders, it had not been reached by an unfair process and the result could not be described by any objective criteria as unfair. The conversion from sheltered rents to a free market valuation system was disappointing for many and yet reflected a fair treatment of the resource and a reasonable return to the province for the use of this resource.(CS88-26)

Payment arrangement eases strain

A woman contacted our office when she received a notice from the Lands Branch that she had 60 days to pay the fees owing for a Licence of Occupation held by her and her husband. The complainant was also under a great deal of strain due to the terminal illness of a family member and to substantial outstanding debts.

We contacted the Manager of Land Administration in the local office. After discussing the matter with the local finance section, he agreed to a seven-week extension for payment. The complainant was grateful for this extension.(CS88-27)

Wage unpaid but not by province

A woman had been hired through a manpower agency to perform services as a cook for a salvage crew working on the Ocean Falls mill site, which had been acquired by the provincial government in 1974 and closed down in 1980. Things did not go well for the salvage company. Scrap removal on site did not proceed with the anticipated speed and movement of scrap to market in Vancouver by barge was therefore slow. Cashflow was correspondingly low and it is evident that the salvage company did not have the resources to meet a payroll consistently during this period. The complainant remained unpaid for her services and ultimately required assistance from the Ministry of Social Services and Housing to leave the jobsite.

The woman believed that she had rendered services to the province, as the function of the salvage company was to remove scrap from the site, therefore making the site suitable for other purposes and enhancing its value to its owner, the province. After investigation, we disagreed. The salvage company was truly an independent contractor and although it could be argued that some services were rendered to the province, the contractor was in fact in debt to the province on other matters and was in attendance on the job site in the pursuit of its own gain. This office determined that at all times the salvage contractor remained independent of government. In addition, the terms of the auction sale made it clear that there was no contractual obligation, connection or implied liability on the part of government for the operations of salvage contractors on site. Therefore, the complainant's concern about being unpaid was in essence an employee relations matter. Her case was taken up by Employment Standards Branch which, through a statutory charge on the proceeds of scrap sales, was able to recover for the complainant and her co-workers a portion of the wages owed. This office concluded its findings by noting the province had been scrupulously fair in dealings with the salvage company and had, in addition, retained the services of an independent consultant to oversee contracting operations onsite and to ensure that safe working conditions were observed with emergency medical services available at all times.(CS88-28)

Ministry of Education

Through liaison with Ministry of Education staff, we have been able to assist people with complaints about schools even though the Ombudsman has no jurisdiction 2to investigate schools directly at this time. The schedule to the *Ombudsman Act* lists several authorities the Ombudsman would have jurisdiction to investigate when it is fully proclaimed, including public schools.

Resolved	16
Not resolved	0
Abandoned, withdrawn, nonjur:	2
Not substantiated	4
Declined, discontinued	
Inquiries	8
Total number of cases closed	30
Number of cases open December 31/88	8

Discipline room monitored

A woman whose son was in a class for children with behaviour problems called the Ombudsman's office, upset because the class apparently used a small, windowless room as a place to send children as a disciplinary measure. The parent felt this was totally inappropriate.

We discussed the matter with the ministry and the parent's concerns were passed along to the appropriate ministry division. Ministry staff inspected the facility. While the room wasn't exactly as the parent described, it was a small, confined area. While the school contended that this form of discipline was not used inappropriately, it is a situation which requires monitoring.(CS88-29)

Home schooling acceptable

A woman who had custody of her children following a divorce decided to withdraw them from school and teach them at home. Her ex-husband believed his children were not receiving an adequate education and wanted the Minister of Education to exercise his prerogative to insist the children be returned to school. He complained that the minister was not enforcing section 113 of the *School Act*.

We discussed the father's concerns with ministry staff. They contacted the school district and learned that the matter had been decided by a court which held that the children were receiving an adequate education at home. The court had received the children's exam scores as evidence. We agreed that it was reasonable for the ministry not to become involved at this time but we were assured that the school district would continue to monitor the children's progress.(CS88-30)

Special education resources found

Children with special education needs can encounter difficulties in finding suitable classes. An 18-year-old youth who was deaf was hoping to be able to get a special education class at a high school in his area. Initially, the school board indicated that a vocational school would be a more suitable choice for him.

We contacted the Special Education Branch of the Ministry of Education. The branch had recently been contacted about this youth's situation. Branch staff subsequently consulted with school board and after a meeting between some school board personnel and the Ministry of Education Review Committee for the Hearing Impaired, adequate resources were provided to enable the boy and a signing interpreter to enter a local high school program.(CS88-31)

Ministry of Energy, Mines and Petroleum Resources

Considering the number of holders of the various types of mineral titles, the Ombudsman's Office receives very few complaints. With the coming in to force of the *Mineral Tenure Act* in 1988, and the repeal of the *Mineral Act, Mining (Placer) Act* and *Mining Right of Way Act,* the law relating to mineral tenure in the province has been consolidated.

Resolved	2
Not resolved	0
Abandoned, withdrawn, nonjur:	2
Not substantiated	6
Declined, discontinued	8
Inquiries	2
Total number of cases closed	20
Number of cases open December 31/88	9

Lack of appeal to be rectified

A blasting foreman had his blasting certificate suspended after the ministry's Prince George Inspector of Mines investigated the circumstances of a blasting accident. The foreman wanted to appeal this suspension, but neither the statute, the *Mines Act,* nor the regulations provide for an appeal.

However the chief inspector of mines agreed to consider the complainant's appeal. After reviewing the appropriate blasting procedures and the circumstances preceding the blasting accident, the chief inspector concluded that the 18-month suspension would stand. After his initial contact with the Ombudsman prior to getting a reconsideration of his suspension, the man came back to our office after the chief inspector's decision.

In our enquiries with the ministry, we could not substantiate this man's complaint. We found the grounds for the suspension to be reasonable. However, the ministry readily agreed that such a decision, which can deprive a person of a means to earn a living, should be an appealable one within the legislation. A tripartite committee of industry, labour and government has subsequently made recommendations which include an appeal mechanism and the chief inspector indicated that the lack of an official appeal process would be rectified in the current rewriting of the legislation.(CS88-32)

'Red Earth' issue not black-and-white

Under the authority of a Special Use Permit issued by the Ministry of Forests, the complainant was extracting from the earth a substance which he referred to as "Red Earth". In 1981, the Ministry of Energy, Mines and Petroleum Resources classified this substance as a mineral according to the definition of mineral in the *Mineral Act.* As a result of this classification, the complainant would lose his right to extract the material as mineral claims had been staked over the area. The complainant believed that the substance did not come within the definition of "mineral" in the *Mineral Act.* He complained to our office in the fall of 1986.

Unfortunately, the ministry was unable to locate its file on this matter. A very short letter dated April 16, 1981 from the Senior Assistant Deputy Ministry to a solicitor in the Ministry of Attorney General was all that was available. This letter stated the conlusion that the "Red Earth" material was a mineral but gave no indication of what research had been conducted to support this conclusion. The Director of Mineral Titles Branch arranged to have the substance examined twice: in late 1987 by a staff member in the Geological Surveys Branch and again in 1988 by a surficial geologist from the Ministry of Environment. After reviewing these examinations, the director concluded that the substance was indeed a mineral. The position of the Ombudsman's Office was that the director had taken into account all relevant material and had given the matter careful consideration before reaching his decision. While the complainant disagreed with the substance of the decision reached, we concluded that he had been fairly treated by this ministry.(CS88-33)

Ministry of Environment

Complaints about environmental administration reflect strong public concern in a wide range of issues.

Resolved	16
Not resolved	0
Abandoned, withdrawn, nonjur:	11
Not substantiated	14
Declined, discontinued	2
Inquiries	4
Total number of cases closed	47
Number of cases open December 31/88	61

Pesticide permit pulled

A Kootenay citizens group was concerned that a pesticide use permit was granted to Canadian Pacific Railroad (Nelson subdivision) because they were aware of some misuse of pesticide products by the company in the past.

When this group approached the Ombudsman's office, we encouraged members to approach the Ministry of Environment with their evidence of unsafe pesticides. They did so and ministry enforcement staff investigated. They determined that there had been improper pesticide storage and container disposal, use of pesticides by untrained or uncertified applicators and application of pesticides without valid permits. This resulted in a suspension of the company's pesticide use permits until a plan was filed by CP Rail which satisfied the Ministry of Environment that pesticide use would take place in safe conditions.(CS88-34)

Aboriginal rights vs. game laws

Two complaints from native Indian hunters in 1988 highlighted the difficulties faced by conservation officers attempting to enforce hunting regulations while land claims issues remain unresolved and when native Indians are claiming aboriginal hunting rights that conflict with existing laws.

In one instance, a game warden accosted a hunter at the site of a moose kill and seized his gun, as well as the front and hind quarters of the animal. The hunter complained to us that the warden failed to recognize his aboriginal right to hunt anywhere in the province.

Although status Indians are not required to obtain a licence, they are bound by the *Wildlife Act* regulations regarding seasons and gender of the animals they kill. In this case, a moose cow had been shot out of season. We advised the complainant how to obtain legal assistance through his band if the regional Crown Counsel office decided to prosecute.

Another hunter lost his moose when he went to a conservation office for a butchering permit. He said he had shot it in Treaty 8 area where native Indians whose ancestors signed the treaty are entitled to hunt without regulation, provided the safety of other humans is not threatened. But the conservation officer had seen him outside the treaty area shortly before the kill and was suspicious. He seized the animal as evidence and the native hunter complained to the Ombudsman's office.

Happily for the complainant, his meat had been preserved. By the time we began our inquiries, two witnesses had surfaced to testify that the moose had been shot inside the treaty boundary and the hunter's meat had been returned to him in a good state of preservation.(CS88-35)

Solution no breath of fresh air

A woman lived at the same address since she and her late husband obtained property under the federal *Veterans Land Act* Resettlement Program after the Second World War. But the area had gradually been rezoned for commercial and industrial use and she became one of the last residential occupants.

She was 72 years old and was experiencing severe breathing problems and other ailments as a result of exposure to fumes from the paint processes employed by a sign company adjacent to her property. She had written numerous letters to local politicians, to no avail. She felt that the provincial Ministry of Environment was doing an entirely inadequate job of controlling dangerous emissions from the sign shop.

The ministry's Waste Management Branch visited the sign shop on a number of occasions, found that the fumes were largely solvent-based and concluded it did not pose a health hazard to the average individual. Finally, the woman complained to the Ombudsman's office.

This was a difficult case because it did appear that the emissions, under certain wind conditions, would cause severe difficulties for this woman. The ministry did not include sensitive individuals such as the complainant in its assessment of emissions. Thus the question arises: what action should be taken to protect the interests of exceptionally vulnerable individuals, especially in light of the fact that she lived there first.

In our investigation, we concluded that the branch could not force the sign shop to curtail its emissions when it perceived no threat to the health of average individuals in the area. Further, the branch was of the opinion that emissions were not of such volume or concentration as to require a waste management permit. However, branch officials did apply pressure to the sign shop to install a venting system which would direct the fumes in a different direction. The sign shop complied with this directive but the equipment installed was not totally effective and with certain wind conditions, the fumes would be directed back over the complainant's property.

Although the ministry's conclusion was far from satisfactory for the complainant, we could not identify anything that was administratively unfair. With respect to the location of an industrial operation so close to her property, that was a matter of municipal zoning and beyond the jurisdiction of the Ombudsman. Although we sympathized with this complainant's plight, we could not substantiate her complaint against the Waste Management Branch of the Ministry of Environment. The complainant was advised that if she wished to pursue her complaint further, it would have to be through private legal action.(CS88-36)

Taxidermist begrudges inspections

A man who owned a gift shop and taxidermy service did a substantial business with European customers who purchased mounted animals and processed pelts. The Ministry of Environment, in an effort to crack down on the illegal killing and export of endangered species, instituted a "total inspection" policy on the export of all wildlife products. This meant that every item had to be inspected as opposed to an honor system or a spot-check policy.

The taxidermist complained to the Ombudsman's office that this policy resulted in delays of his export orders. He felt that the delay inherent in the inspection process, with a limited number of inspectors who would often be away in the field, would result in a significant loss of business.

The man said he had been in business at that location for many years, was well known to the authorities and had always conducted his business with scrupulous regard for wildlife laws.

In our investigation, we found that in practice the policy could be inconvenient and time-consuming. It was, however, a trade-off in the effort to prevent poaching and trafficking in illegal or endangered species.

The complainant pointed out that guide/outfitters operating in the area can use their species licence to ship untreated hides out of the country within 30 days. Guide/outfitters are, however, highly regulated by the province. If the guide/outfitter's licence is revoked, he has lost his means of earning a livelihood, an extremely powerful sanction. The export laws can only be enforced on taxidermists, on the other hand, through expensive and time-consuming court processes.

While the process of total inspection may be a nuisance, we did not view compliance as requiring an inordinate expenditure of time and effort. A tradeoff was made, and was entirely reasonable within the wider context of wildlife management and conservation.

An element of irony emerged during the investigation when this office learned that the "total inspection" policy could not possibly be enforced in the lower mainland, because of the high volume of export permit applications - budgetary constraints would simply not allow the hiring of inspectors sufficient to implement the policy.(CS88-37)

Coal dust compensation sought

A number of individuals complained to this office late in 1987 about coal dust emissions from Ridley Terminals Incorporated (RTI), a coal port located near Port Edward.

Coal delivered to the terminal is stored in huge piles where loading equipment is later used to transfer coal from the piles to ships by conveyor belt. Unfortunately, the piles, when combined with dry weather and wind conditions, charge the air with fine coal-dust particles. These particles are carried by the wind and settle on anything in their path, which has included a number of residences.

Residents who have experienced the coal dust problem describe the material as penetrating and resistant to all but the toughest scrubbing. Stairs, decks, exterior paint, furniture, and rugs have been described as requiring either major cleaning or replacement.

Although the terminal itself is an international port under federal jurisdiction, the Waste Management Branch of the Ministry of Environment nonetheless has authority to monitor dust emissions and issue waste management permits to provide a reasonable ceiling on such emissions.

Our investigation showed that at the time the complaints were received, the Waste Management Branch had already been involved extensively with the company to develop and administer a dust suppression system adequate to maintain good air quality and prevent damaging dust fall. The program is rigorous in its requirements and sets out a schedule for installation of an automated spray system, purportedly state of the art in dust suppression.

We were informed that RTI had complied fully with all waste management requests and that 1988 was a year of relatively low dust emission, due in part to a wet summer. If 1989 produces dry weather and high winds, the automated spray system for dampening coal piles will be put to the test.

We were not able to assist the complainants in obtaining compensation for damage they had suffered through coal dust contamination. The ministry could not be faulted for its performance, nor were any remedies provided in existing legislation that would allow an order for compensation to be paid from a regulated entity to third parties. Their only recourse for compensation was through the courts.(CS88-38)

Prosecution sought over water diversion

Few cases arouse such passion as disputes over water. For individuals whose water supply comes from a stream which passes through a number of private properties, the matter can become heated. And when government steps into the picture to carry out some aspect of its mandate, it can very easily find itself cast as the villain.

A man's water supply had, on certain occasions, been severely diminished due to an unauthorized upstream diversion. As a result, he sustained major losses of fish which he raised in a stream-fed pond on his property. In response to his complaint, the Ministry of Environment's Water Management Branch promptly investigated the diversion and made an order that the original path and flow of the stream be restored.

Subsequent events showed a half-hearted job was done to seal up the diversion and the man had to go upstream himself to seal the offending area. When the upstream property was subsequently sold, the new owner, unaware of the branch order, removed the diversion plug to use the stream for irrigation.

Another complaint from the downstream property owner brought Water Management personnel to the scene again and they informed the new owner of his obligations to plug the diversion. The diversion was plugged but the fish losses could not be reversed.

The man thought that a prosecution under the *Water Act* should have been launched against the original upstream owner and he complained to the Ombudsman's office when it was not.

In our investigation, we found the reasons of the Water Management Branch for not recommending prosecution to be sound: prosecution is difficult, costly, time-consuming, and, most importantly, uncertain with the ultimate prospect of a relatively insignificant fine if the Crown's case succeeds. The branch reserves the power to recommend prosecution in matters of public interest, particularly where the offending party refuses to cooperate. The primary tools for resolving smaller private disputes are diplomacy and persuasion. Branch staff do not view themselves as a police force, nor should they.

The complainant voiced a number of other concerns about

☐ division of the old upstream licence when separate lots of the upstream property were sold,
☐ the mapping of the original path of the creek, and
☐ his right to continue to direct the flow of the creek across his property.

Notwithstanding a clerical error, we found the branch had, in each case, consistently acted in a reasonable and fair manner. There was, in fact, much file material to contradict the complainant's assertions about his own use of the stream. Fortunately, other downstream users did not depend on maintenance of the original course and the stream path the complainant maintained benefited him without harming others. For this reason, the branch exercised some forbearance and did not press the issue.

Although the complainant was not able to press a prosecution against the original upstream owner with the assistance of the Water Management Branch, the situation from which he benefited was restored.(CS88-39)

Sharing water supply source of discord

Water can become a precious commodity during long dry summers. Disputes over its use often have a long history. In this particular case, the conflict went back about 10 years.

A man who owned several properties was supplied with water from a pipe located at a pickup point on a creek. Other individuals made use of a ditch authorized under this man's water licence for a number of years to service their own lots with drinking water.

A dispute arose between the owner and the other water users over the use of his point of diversion and, after investigating, the Deputy Comptroller of Water Rights issued an order for "joint works," meaning all users would share an intake facility.

The man objected to the order, preferring to have control over his own intake, and appealed the decision to the Environmental Appeal Board. The board ultimately decided against him and he complained to the Ombudsman's office. He felt the Water Management Branch had inappropriately and unfairly taken away his point of diversion on the creek. He also contended that the EAB had "rubber-stamped" Water Management's decision.

Our investigation revealed that the other parties had been able to work out an agreement among themselves as to how their works would be constructed. It also revealed that the EAB had addressed the complainant's concerns comprehensively and fairly, though obviously not to the complainant's satisfaction.

We concurred with EAB findings that:

1. There is more than enough water in the stream, even at the low flow periods of the summer, to serve everyone's needs in a joint works. The intake pipe which is positioned in the stream periodically needs repositioning, especially after periods of high flow where rock and other debris are carried down the stream and can dislodge the pipe. When this happens, water pressure immediately drops and is detected by members of the Water Users District who share the works with the complainant. A water bailiff or other member of the Water Users District usually attends within 24 hours to rectify the situation, where upon water pressure is back up to normal and the division box, constructed according to specifications set by Water Management, is full to overflowing.
2. The EAB was critical of two acts by Water Management. Firstly, in allowing the appointment of a water bailiff whose impartiality could be questioned, as his duty is to oversee and ensure the fair operation of the joint works. The bailiff had been appointed from the membership of the Water Users District who share water with the complainant. Secondly, Water Management had inappropriately, in the view of the EAB, threatened cancellation of one of the complainant's licenses for "failure to make beneficial use or construct necessary works". This point remains open to debate as technical arguments could be made in favour of both sides; however,the EAB noted that this matter had been addressed in an insensitive way and that the element of threat was inappropriate. Again, Water Management was taken to task for this departure from normal practice.

The EAB endorsed Water Management's general concept of employing joint works where relations between two parties had been unsatisfactory. The general theory is that such an order will force opposing factions to work together in a common interest; this is usually the case although there are some exceptions. The EAB, as a point that should have been rather gratifying to the complainant, recommended that Water Management assist in any way possible if the complainant wishes to construct a separate intake at his own expense.

In general, this office found the conduct of Water Management Branch to be fair and reasonable. What is more, the EAB did an exemplary job in reviewing the conduct of Water Management Branch and the complaints put forward by the complainant and showed great sensitivity and creativity in crafting a judgment that would respect the facts, the requirements of the *Water Act* and the sincere desires of the complainant. In a difficult, emotional area, they are to be commended.(CS88-40)

No hunting area matter of judgment

This case involved a matter of a judgement with potentially serious consequences.

A woman, concerned about a major danger to residents of an area from hunters' bullets, got together a number of her neighbours and approached the Ministry of Environment and the regional district to create a "no hunting" area for the safety of residents.

Feelings run high in this area over hunting issues and this case was no exception. The beauty of the area and the abundance of wildlife make it a favourite destination for many hunters who, in turn, make a significant contribution to the local economy.

With the help of others, this woman had compiled an extensive dossier on dangerous incidents which had occurred recently. The Ministry of Environment investigated this record of incidents and weighed their severity and frequency against the criteria it had traditionally used for limiting hunting. When the ministry declined to create a no-hunting area, the woman appealed to the Ombudsman's office.

In our investigation, the central question became clear: as local development and population increases, what is the threshhold level at which shooting should be restricted?

The ministry took the position that the threshhold level is the point at which population density is sufficient to allow incorporation as a village or town. In spite of the complainant's contention that this was, in effect, the case already, there was considerable space between residences and the rural character remained. The ministry admitted that there were exceptions to the general rule, such as areas populated for industrial activity (pulpmills or mines, for example) or recreational activity, such as campsites or picnic sites, where shooting can readily be seen to pose an unreasonable hazard.

In the end, it remains a matter of judgment as to whether residential density has developed to the point that any shooting activities are likely to pose a hazard. We found the Wildlife Branch had considered these questions fairly. As such, we could not find any clear administrative error.(CS88-41)

Pesticide notice only part of permit

The Ombudsman's office was contacted by a man who was concerned about a pesticide use permit that he had read in the legal notices section of his local newspaper. The notice indicated that a permit had been given to the Ministry of Transportation and Highways to use a herbicide called Spike. The man gathered from the notice that its use could start the very next day. He was concerned that this timing effectively eliminated any appeal period before the herbicide was used. He lived 70 km from the Highways office that had a copy of the permit.

Generally, only a portion of the permit is printed in the public notification. We checked the whole pesticide use permit and found that it was subject to several conditions not published in the legal notice. One of the conditions stated that the permit could not be used until 31 days after public notification had taken place. We advised the complainant that the Ministry of Environment had ensured that the right to appeal the permit within 30 days was preserved.

We also recommended in our public report on pesticide regulation in B.C. (Public Report No. 11) that the ministry require public notification of all of the conditions which accompany a pesticide use permit, many of which are safety and health oriented. The ministry disagreed with that recommendation, claiming it to be too expensive and pointing to the fact that the public notice identifies a location where the whole permit is available to read.(CS88-42)

Ministry of Finance

The past year brought a number of complaints concerning the recent *Property Purchase Tax Act* legislation. Many of the open cases relate to the Principal Group investigation.

Resolved	23
Not resolved	0
Abandoned, withdrawn, nonjur:	9
Not substantiated	36
Declined, discontinued	4
Inquiries	15
Total number of cases closed	87
Number of cases open December 31/88	152

Error found in tax coding

A property owner complained that his property had been assessed as industrial when it should have been residential. The tax levy for the industrial classification was substantially higher.

Our review confirmed that an error had been made in the numerical coding which produced the wrong classification. When this was drawn to the attention of the tax assessment authorities in the Ministry of Finance, a correction and financial adjustment were made immediately.(CS88-43)

Mistaken purchase granted tax leave

An elderly woman recently widowed in Alberta, chose to move to British Columbia to live close to a daughter. In preparation for the move, the woman came to B.C. and purchased a residential unit in a seniors' housing complex. She paid the Provincial Property Purchase Tax on the transaction.

She went back to Alberta, finalized her business there and returned to B.C. It was then she realized the unit she had purchased was not the one she thought she had purchased. She paid the difference in the price and bought the desired unit, paying the Property Purchase Tax again on the full purchase price.

The application for a refund of the tax paid on the first unit was refused. The ministry's decision was based on information that these were two separate purchases and hence both taxable.

When this woman approached the Ombudsman's office, we approached the ministry and suggested that these were unusual circumstances, with reason for compassion, because she had made an error in identifying her desired unit in the first place. Ministry officials agreed and the tax on the initial purchase was refunded.(CS88-44)

A question of deadlines

A woman complained to the Ombudsman about a ministry demand for a late payment penalty on her property taxes. She claimed the tax notice had been received on July 8, 1988 and her payment was mailed prior to July l2, 1988, the deadline for payment.

In our investigation, we reviewed the tax notice. It clearly explained that the deadline was July ll, 1988 and that late payment would incur a five per cent penalty. The envelope used to mail payment was clearly postmarked July l2, 1988.

The ministry considered a third point in assessing a penalty. The Home Owner Grant application which is part of the tax notice was dated July l, 1988 and appeared to be completed in the woman's handwriting. This indicated the tax notice was likely in the applicant's possession from at least July 1, 1988, not July 8 as the woman contended.

When we contacted the woman again, she told us that she had predated the application because she believed, mistakenly, the deadline was earlier than the tax deadline. The woman then chose to pay the penalty without further question.(CS88-45)

Penalty properly levied

A businessman complained to the Ombudsman when the ministry imposed a 100 per cent penalty on his social service tax arrears, the maximum allowable. As a small businessman, the penalty created a hardship. Furthermore, he claimed to have received only one telephone call and one letter from the ministry and felt some discussion or negotiation would have been appropriate.

Our review with the ministry revealed there had been a failure or a delay submitting taxes 14 times in 19 months. Each default is identified by monthly print out. The single letter referred to by the complainant notified him of the 14 deficiencies and indicated they would result in the 100 per cent penalty without further warning. Deficiencies then occurred in the next seven successive months. We concluded that the ministry's actions were proper.(CS88-46)

Sale of coins deemed taxable

When is a coin not merely money? The answer, of course, is when it is a collector's item. The rarest of pennies may be worth many thousands of times its face value.

This is the distinction which made the difference to an individual who complained to the Ombudsman that he was being forced to pay sales tax on collectable coin transactions. He felt an unfair distinction was being made between his own business and banking institutions which also sell money.

We considered the matter and, after consulting with the ministry as to their rationale, accepted the inherent difference between banks and coin sellers. A bank may impose a service charge for the sale of money but the money is sold at face value. While some people might want to save as much of it as possible, its value is the value of currency. Rare coins, on the other hand, are considered commodities, not currencies, because their value is much more than the face value. We considered the ministry's basis for taxation to be fair.(CS88-47)

Taxes foregiven due to error

A woman purchased property on September 21, 1987. As part of the conveyance of the property, her solicitor performed a tax search. The only tax payment necessary at that time was an adjustment to the vendor, as the vendor had paid the annual property taxes to December 31, 1987.

A year later, the woman was informed that there were additional taxes owing on the property dating back to 1985. In error, the B.C. Assessment Authority (BCAA) had failed to amalgamate taxes on two portions of her property which had been assessed within different property classifications - residential and seasonal/recreational. Separate file numbers were assigned for each classification but since 1985, taxes had been charged under only one file number.

This woman found herself unexpectedly facing a tax bill of approximately $900. She felt it was inappropriate to be charged taxes owing for a period when she was not the owner of the property.

Upon investigation, we agreed. The error prevented her or her solicitor from knowing the true tax liability at the time of purchase.

Prior to our involvement, the ministry had sought to soften the impact somewhat by agreeing to forfeit penalty and interest charges for the preceding years. However, it's position was that taxes are attached to the land and the new owner was liable. When we discussed this with ministry staff, however they agreed that it was inequitable for a tax to be levied on an individual for a time when she did not own the property. The matter was resolved when the ministry chose to levy tax on the complainant only from the date of purchase.(CS88-48)

Ministry of Forests

The Ministry of Forests and Lands was divided into its two components in July of 1988. The Ministry of Forests is again a separate entity while Crown Lands is now the responsibility of the Minister of State for Thompson - Okanagan and Kootenay.

Resolved	11
Not resolved	0
Abandoned, withdrawn, nonjur:	13
Not substantiated	13
Declined, discontinued	24
Inquiries	4
Total number of cases closed	65
Number of cases open December 31/88	37

Billing arrangement hits snag

A man who operates a private business offering safety training courses was contacted by the Ministry of Forests. Arrangements were made to provide training but, as an element of urgency existed for the training, the contractor provided it, anticipating a formal contract would follow. He had done this before.

Ministry staff then phoned to ask the man to bill another private training firm for the work, explaining that the firm would pay him to offset money it owed to the ministry for rental of facilities. This firm, however, paid only 35 per cent of the man's fee before going into receivership. In the eyes of the receiver, this man was an unsecured creditor.

The man tried to claim the balance of his fee directly from the ministry, on the grounds that his contract, even though it was only verbal, existed before the billing process was in place. The ministry did not pay him and as a result, he complained to the Ombudsman's office.

In our discussions with ministry staff, we suggested the ministry had created a contractual situation by negotiating directly with the trainer. The request to follow a billing process via the private firm did not lessen the ministry's obligations. Legal advice given by the ministry's solicitor supported our position and payment, plus interest, was made forthwith.(CS88-49)

Man not convinced he'd been paid

An elderly gentleman complained that the Ministry of Forests had failed to pay him a sizeable sum for work completed almost two years previous.

Our investigation confirmed payment had been made by cheque, endorsed by the complainant and deposited into his account. The best efforts of ministry staff, the bank manager and Ombudsman staff failed to convince the complainant that payment had been made in full.

In view of the complainant's age, state of agitation, and the fact he lived in a small community, we contacted the officer in charge of the local RCMP detachment. Giving the issue a low police priority and using some personal time, the policeman met with the complainant and, over two meetings, succeeded in convincing the man that he had not been wronged. A true example of cooperation in the public interest.(CS88-50)

Extent of damage in dispute

A ministry truck rolled down a private driveway, damaging a fence and a diesel fuel tank and stand.

Ministry staff then used the property owner's loader to try to remedy the situation but damaged the loader as well. The owner's husband had to repair the fence immediately to prevent their cows from wandering off.

The property owner believed that she should be compensated for the damage to the property and that her husband should be reimbursed for his labour. An Ombudsman officer assisted the complainant in her dealings with ICBC. The complainant was satisfied with the compensation offered by ICBC for the damage caused by the ministry's truck.

The complainant's loader was not insured by ICBC, however, and she was referred to the Ministry of Forests. The ministry was willing to pay for the cost of replacing one of the forks but the woman maintained that the ministry was also responsible for a bent tine on another fork. The ministry's position was that this tine was not damaged as a result of any actions by ministry staff.

To resolve the dispute, the ministry proposed that the loader be examined by a local equipment company and that both parties abide by its opinion about the origin of the bent tine. However, the company did not wish to get involved. Subsequently, the ministry agreed to compensate the complainant for the full amount.(CS88-51)

Woodlot award questioned

A man expressed interest to the Ministry of Forests in a woodlot in a particular area. The first two woodlot areas he identified were not considered suitable by the ministry staff but they suggested another site which would be suitable for a woodlot. After the complainant applied for this area, ministry staff made a field trip to the area. The boundaries were modified to exclude a major swamp system and a deciduous area and corners were marked. Referrals were sent to other authorities requesting their comments. Clearance was sought from the Lands Branch and inventory information was requested from the ministry's Inventory Branch in Victoria in order to determine the annual allowable cut.

After all referrals had been returned and clearance obtained from the Lands Branch, the woodlot was advertised and applications invited. Ultimately, after a year's delay, the woodlot was awarded to someone else, prompting the man to complain to the Ombudsman's office. He thought that he should have been awarded the woodlot because his own land was closer to the woodlot area than the other applicant's. He also complained about the delay in the whole process.

Our investigation revealed that, while this process took over year, no excessive delay had occurred, given the number of authorities and the steps which had to be completed. We also reviewed the ministry's scoring of the applications. The *Forest Act* specifies certain criteria which must be taken into account when applications are evaluated. The proximity of privately-owned land to the woodlot area is only one of these. We concluded all five applications had been scored equitably according to the ministry's guidelines and that there was no unfairness or impropriety in the ministry's evaluation. Therefore, the file was closed as unsubstantiated.(CS88-52)

Time required for audit trail

We received a complaint from a forest company whose principals asserted that it was inequitable for the Ministry of Forests to give priority to paying certain accounts when the contractor offers a prompt-payment discount. A common structure to such discounts is known as "two/ten, net thirty" - two per cent discount for payment within 10 days, the full amount within 30 days.

In our investigation, we learned that in the past the Ministry of Forests had been criticized by the Office of the Auditor General for paying accounts too quickly before a proper audit trail could be created to ensure that accounts were not being overpaid or double paid. This practice reflected the ministry's recognition of the fact that small contractors in the field require prompt payment to minimize their financing expenses.

We were informed that current payment policy reflected a compromise between optimum record-keeping practice and speedy payment. Invoices are paid as soon as possible following expiry of 30 days with earlier payment where possible to take advantage of discounts offered by contractors. However, where earlier payment is made, there must be adequate documentation, confirmation and completion of services. We found this to be a fair payment process and were impressed with the sensitivity shown by Ministry of Forests' personnel to the needs of contractors in the field.(CS88-53)

Old growth stands preserved

A man approached the Ombudsman's office as a representative of a wilderness coalition which was opposed to the logging of old growth cedar stands near Whistler on Cougar Mountain. The stands of giant cedars had become something of a tourist attraction, and we were advised that many groups of tourists visited the trees annually. The stand was located within an area for which cutting permits had been issued by the ministry.

Because of these competing values, we made enquiries and were advised that the Municipality of Whistler had also made representations. With the cooperation of the logging company, an alternate timber supply was allocated and the old growth cedar stands preserved.(CS88-54)

Ministry of Government Management Services

Resolved	2
Not resolved	0
Abandoned, withdrawn, nonjur:	0
Not substantiated	0
Declined, discontinued	4
Inquiries	0
Total number of cases closed	6
Number of cases open December 31/88	1

Bidding deadline questioned

A businessman responded to a call for tenders from the Purchasing Commission, submitting a bid on a dismantled highways building. The deadline for bids was 2 p.m., Friday, July 29, 1988. The businessman telephoned the commission at 3 p.m. that day and confirmed that his bid had been received in good time. He was also told the bids would be held unopened over the long weekend until Tuesday, August 2. He inferred from this that the deadline had been extended.

When the businessman phoned on August 3, he was told only that his bid had not been successful. He was denied any information about the name of the successful bidder or the amount of the winning bid. Because of this, he complained to the Ombudsman's office that the bidding process was handled in an unfair way, believing that the deadline had been extended.

When we investigated the matter, we learned that although the bids were not opened until later, all bids had in fact been time and date stamped on receipt and no bid was accepted after the cutoff deadline on July 29. The bids had not been opened at that time simply because of a delay in collecting them all from the mail room. As a matter of policy, the commission does not release information about a successful bid until after its acceptance has been confirmed by appropriate financial arrangements. On this particular tender, there had been a problem. The high bidder was unable to complete the necessary financing and so, after a delay, the building was awarded to the second highest bidder.

We provided the complainant with information about the bids and an explanation of the delays in the process.(CS88-55)

Ministry of Health

In 1988, we saw complaints closed concerning this ministry increase to 475 from 280. We receive cooperation from the staff who are responsible for administering the myriad of services provided by the ministry. Most complaints relate to such issues as traditional health services, Medical Service Plan eligibility, or payment for hospitalization. Less-visible ministry functions also generate calls and there have been a number of issues raised about the self-regulating health professions. (See Section B of the introduction to this report, page 12). In some professions, such as chiropractors and dental technicians, internal rules of conduct and standards for registration must be approved by the ministry. For other professions, such as licenced practical nurses, the profession is governed by an act and by a board appointed by the Lieutenant Governor in Council. The relative responsibilities of the professional group and the ministry can be confusing to the public, generating complaints that the ministry is not "controlling" standards of care.

Last year we reported on the administration of the system set up to grant billing numbers to new physicians. In August 1988, the legislation restricting the issuance of billing numbers was declared by the British Columbia Court of Appeal to be contrary to Section 7 of the Canadian Charter of Rights and Freedoms. The court determined that the legislation and regulations deprived young practitioners of "liberty" and violated the principles of "fundamental justice". Hence, the enactments were of no force and effect.

In 1989, we will be conducting systems studies of the delivery of mental health services to children and the regulation of on-site sewage disposal systems.

Resolved	166
Not resolved	0
Abandoned, withdrawn, nonjur:	40
Not substantiated	108
Declined, discontinued	107
Inquiries	54
Total number of cases closed	475
Number of cases open December 31/88	108

HOSPITAL PROGRAMS AND EMERGENCY HEALTH SERVICES

Concern over transfusion

A man called us to express concern about a regional hospital society policy which does not allow a person to choose an immediate family member as a blood donor. The man's son had a hereditary blood disease called spherocytosis. Because of his condition, he required occasional blood transfusions.

With increased concern about contracting AIDS or some other virus from a transfusion, the boy's father wanted a relative to donate blood rather than have his son receive it from a blood bank. He also thought that blood from a relative would be easier for his son to accept.

When we enquired with the Red Cross, officials reported that research shows designated or directed donor programs are poor medical practice because the risk of infection is significantly higher, largely due to the fact that designated donors are often first-time donors who do not have an established history of safe donation.

The hospital offered to have elaborate blood testing done to get the son the best possible blood match. We and the father were told that complex protein substances in the red blood cells can be identified and through a type of 'fingerprint', a closer bloodmatch can be found, leading to less likelihood of antibody formation.

We closed this case as resolved by the hospital.(CS88-56)

Facility's impact at issue

We were contacted last year by a man who was concerned that an adult care facility, a home for handicapped persons, opened next door without any previous notice to or involvement of the neighbours.

This man felt that the facility's impact was considerable; no off-street parking was available, more people would be coming and going in what was a single-family area. We explained to the man that the single-family residential zoning was not breached by this facility because such adult care facilities have a special status. The Provincial Adult Care Facilities Licensing Board was not obliged to consider the local impact factors.

We also recognize the real concerns of people whose environment is changed without notice or consultation and that their fears need to be addressed. Apart from anything else, it may be unpleasant for the facility residents if the facility is not accepted by the neighbours. For these reasons, we have been impressed by the efforts the Ministry of Health is now making to develop a process which will involve local government and provide the appropriate forum for neighbourhood participation.(CS88-57)

Notice of suit in error

A man received a letter from the ministry's Third Party Liability Section. The letter seemed to suggest that the ministry would attempt to claim $10,000 in hospital expenses from his wife in the event that her suit against a restaurant was successful. The woman had broken her leg in the restaurant and was suing for damages. However, since her suit was for $5,000, the man thought the ministry was acting unreasonably.

We contacted a representative at the Third Party Liability Section and discovered that an error had been made. The hospital fees totalled $5,400 rather than $10,000. The representative also said the money would not be collected through the woman's suit but rather through a separate claim altogether. The Hospital Programs Division has an agreement with insurers where matters are settled informally. If the woman intended to sue, the ministry wanted to be informed and to be provided with the name of the restaurant's insurer and/or the name of her lawyer. There was no pressure on her to sue for money above that which she had originally considered.(CS88-58)

Elderly couple assured reunion

A senior citizen, married for 46 years, lived in a seniors' care facility. His wife, who had multiple sclerosis, lived in another. He contacted our office to see if we could help arrange for him to move to his wife's facility. He had been spending over half of each day just travelling to and from her residence.

When we looked into it, we found that the man's concerns had already been addressed. He had been placed on the priority waiting list at his wife's facility and we were assured that the couple would be reunited as soon as possible. We felt that the complainant's concern was taken seriously by the ministry and had received proper attention.(CS88-59)

Effects of move feared

A man was concerned about the possible negative effects of moving his friend from an intermediate care facility, where he had lived for the past 14 years, to an extended care hospital. We contacted the local Ministry of Health office and outlined the concerns.

According to the ministry, the man's friend had been admitted to hospital where, at the request of his physician, a long term care case manager had reassessed the man to the extended care level. The case manager stated that the resident understood the implications of the reassessment and had given his verbal consent to be placed in the extended care unit. The intermediate care home where he had been living is licensed only to care for intermediate level clients, that is, those who are safely and independently mobile. When residents are no longer classified at the intermediate care level, they are required to move to an extended care facility where there is a higher level of staffing, proper equipment to care for clients who cannot walk on their own, and closer medical supervision

The case manager made a follow up visit a week later to review the resident's condition at the request of another friend. She found no improvement. She said that she had informed everyone concerned that the resident could return to the intermediate care home if his condition improved to the point where he was safely mobile and did not require such a high level of medical treatment. Then he would be given priority on the waiting list to return to his former residence in accordance with long term care policy.(CS88-60)

Care questioned by close friend

An elderly woman who required extended care was admitted into a private nursing home in Victoria just prior to Christmas 1987. Her friend, an elderly gentleman of 92, called our office to voice his concerns about the woman's apparent inability to obtain release from the facility.

The man had been the woman's friend for over 40 years and, until her admission to the care facility, had visited her daily at her home. He was dissatisfied with the facility's policy which only allowed the woman to go out on certain days of the week and for a given period of time. He said that, on one occasion, they had not allowed her to go out to dinner with him. He also felt the ministry should have contacted him before she was placed in the private hospital.

We spoke to the ministry official involved, discussed the situation with a close female friend of the patient and found that the woman had recently been transferred to a newer and more suitable care facility. Both the health official and the woman's close friend were satisfied that the patient had received good quality care and had not been held in the original facility against her will. They both said the woman was in good spirits, happy and content.

We informed the man that his complaint had been appreciated but we felt that the patient had received and was receiving appropriate and adequate care. (CS88-61)

Ambulance bill forgiven

A woman's husband was transferred by air ambulance from a hospital in the interior to a hospital in Vancouver because of medical complications that required specialized attention. The doctor had told the couple that there would be no transportation charges but, some time later, the woman received a bill for $91.80 for the air ambulance service.

The woman felt that the bill was unfair. Neither she nor her husband had asked for the service and it was medically necessary because the local hospital did not have adequate facilities. She refused to pay the bill and was told that it was now in the hands of debt collectors.

At the complainant's request, we spoke to her family doctor who confirmed that he told her there would be no cost for the air ambulance service. He said he had confirmed this in a conversation with air ambulance attendants at the Emergency Health Services Commission, which is responsible for the operations of the air ambulance service. A commission official told us there is a fee to patients for inter-hospital transfers and that the complainants were billed according to this policy. The official suggested that they write to the commission explaining the erroneous information given to them.

The complainant subsequently wrote to the Emergency Health Services Commission whose officials instructed the Collection's Department to forgive the ambulance bill. The complainant was relieved and appreciated the responsiveness of commission officials.(CS88-62)

Concerns of transfer service

A woman called the Ombudsman's office to express concerns that the planned privatization of certain ambulance transfer services in B.C. may result in a lower quality of service and therefore may jeopardize the lives of patients. She said that her father had died in another province as a result of a problem with ambulance transfer services.

When we contacted an official at Emergency Health Services (EHS), he explained that limited privatization was being planned but only for patients who did not require emergency medical assistance. He said that the privatized transfer service would only be for those patients who would otherwise go by taxi. If a doctor or nurse felt that the patient should be transferred by an EHS-operated ambulance, that option would still be available.

Additionally, EHS officials assured us that private company staff would have to be registered with EHS and hold an Industrial First Aid ticket. This information satisfied the complainant. She said that she had not realized the limited nature of the privatization.(CS88-63)

Technical problems cleared up

On one of his field visits, the Ombudsman received a complaint about the ambulance service of Emergency Health Services for Quadra Island. The complainant was concerned that the frequent breakdown of pagers was seriously affecting the effectiveness of emergency communication systems.

In remote areas of the province, emergencies are communicated to local volunteers using a paging system. Volunteers then obtain the information and take necessary emergency action. The frequency of pager failure was of great concern to the complainant who felt that patients may be placed at great risk.

When we contacted officials at Emergency Health Services, they said that they were sending a technician to test the signal strength of the transmitter located on Mount Washington. They would also check out the pager system on Quadra Island.

As a result of their field checks, Emergency Health Services reported that they had found, and cleared up, frequency problems with the transmitter and had supplied island volunteers with reconditioned pagers. The complainant was pleased that the new supply of working pagers and the adjusted transmitter had resolved his concerns.(CS88-64)

MEDICAL SERVICES PLAN

Awareness the key to access

Our office received several complaints from B.C. residents whose medical services coverage was cancelled or denied for arrears in premium payments. They felt that the action of the the Medical Services Plan prevented reasonable access to health services and may be contrary to the intent of the *Canada Health Act*.

We believed the central issue here was whether the general public is sufficiently aware of the premium assistance available to those having difficulties meeting thei premium bills.

We found that the Medical Services Plan office sends annual applications for premium assistance to all subscribers who are 65 and over or who are receiving premium assistance at the time of the annual recertification for the program. The office pointed out that the program is widely publicized through the news media, especially after the budget speech of each year and that each application kit for medical services coverage includes a pamphlet describing the program and an application fo premium assistance.

Approximately 600,000 residents of the province participated in the plan's premium assistance program i 1988. With greater than one in every five people in the province receiving premium assistance, we were satisfied that the program was well-publicized.(CS88-65)

Time limit on overdue premiums

A woman applied for Medical Services coverage i February 1987 but did not actually pay any premium until January 1988. The Medical Services Plan required waiting period before benefits began, but since she ha been in touch with the plan several times prior to Janu ary 1988, she felt the plan should give her continuou coverage and allow her to back-pay her premiums so that she could receive retroactive coverage.

We were unable to support the woman's complaint. The *Medical Service Act* and Regulations require the Medical Services Plan to have new applicants fulfill a statutory waiting period. The Regulations also say coverage for insured people ends 15 days after their premiums are listed as overdue, unless the Medical Services Commission decides otherwise. The commission has agreed that the plan will consider people's requests for continuous coverage up to eight months from the time they defaulted in paying their premiums, but in this case, the woman was beyond the time limit.

The complainant was relieved to learn, however, that the Medical Services Plan only pays for doctor's services. She had been in hospital and was worried that she would have to pay a hospital bill. We explained to her that the Hospital Programs Division for the Ministry of Health covers hospitalization. As long as she is a Canadian resident, her costs would be covered, regardless of the fact that her Medical Services coverage was not current.(CS88-66)

Doctor complains about pay-back request

A doctor thought that the Medical Services Commission was acting inappropriately in requiring him to pay back approximately $75,000 to the Medical Services Plan. The commission held that his billing pattern was excessive for the kind of medical services he provided but it had agreed to put the matter on hold until representatives from the B.C. Medical Association's patterns practice committee conducted an on-site visit.

When we spoke to the commission, this visit had just taken place but they had not received the association's report and recommendation. If a doctor disagrees with a decision, he or she may refer the issue to an audit committee. In January 1988, the government amended the *Medical Services Act* to enable the Minister of Health to establish audit committees, consisting of people appointed by him, to review the insured services rendered and the patterns of practice followed. The people on an audit committee have the same powers as those conferred on commissioners by sections 15 and 16 of the *Inquiry Act.*

After giving a practitioner the opportunity to be heard, an audit committee may make an order. This order is binding on the practitioner and the commission. Also, the order may be filed in court and is therefore enforceable in the same manner as a judgment of the Supreme Court.

Given this information, we decided to discontinue our investigation of the doctor's complaint. We advised the doctor that he had an available remedy, through an audit committee, should he disagree with the commission's decision.(CS88-67)

Date of application at issue

A woman applied for Medical Services Plan coverage for her son as her dependent. The plan took a month to inform her that her son, who was over 18 years old and not a full-time student, was ineligible. During the time between her application and the notification, he was hospitalized and there were resulting medical bills owing.

While the woman agreed that the plan was correct in finding her son was no longer a dependent, she thought he should have been covered from the date of her application. She held that, as she was unaware the plan would not consider her son a dependent, her application date should be considered as his application date for medical services coverage.

When we enquired, plan officials reviewed her case and agreed to consider the date of her application as the date of her son's application for individual coverage. As a result, the son's effective date of coverage was changed and the bills incurred during the gap were considered insurable.

Once the young man paid his premiums, the plan would send a letter confirming he had coverage effective at the new date. His doctor could then resubmit the claims and they would be paid.(CS88-68)

CAT scan payment denied

The Medical Services Plan would not reimburse a man for a CAT scan which he had received in Honolulu, Hawaii as part of emergency medical treatment for abdominal discomfort. He thought this unreasonable and complained to the Ombudsman's office but we were unable to support the man's complaint.

The *Medical Services Act* and Regulations stipulate that the plan may provide payment for insured medical services rendered outside of the province only when the need arises unexpectedly while the subscriber is temporarily absent from the province or when prior authorization for the specific service has been given by the Plan.

In the complainant's case, he had some upper abdominal discomfort prior to leaving the province and was examined by his physician here. When in Hawaii, his doctor there took clinical notes which indicated that the man asked for a CAT scan and that his physician in B.C. had declined his previous request for one. Given this information, it was clear that the man's condition had not arisen unexpectedly while in Hawaii. Instead, it appeared his discomfort had been present for approximately three months prior to his leaving the province.

Also, his condition had been investigated in the province and if a CATscan had been warranted at that time, it could have been performed prior to his leaving for Hawaii.

Given that the man's need for a CATscan did not arise unexpectedly, and that he was the one to request it, we did not think the plan had acted unreasonably by refusing to reimburse him for this service.(CS88-69)

Extent of cosmetic surgery disputed

A woman who had had a tumour on her face contacted our office because she was refused coverage for reconstructive surgery. She said that she needed surgery because her eyelid would not close, resulting in eye ulcers; because her glasses could not be adjusted to fit evenly and were cutting into the cheek; and because of excess tissue inside her mouth. These problems existed despite earlier reconstructive surgery.

When we contacted the Medical Services Commission, we learned that none of the surgery had been refused. No permission was necessary for the mouth operation, because it is not considered "cosmetic". Surgery to deal with the eyelid had been approved. The only remaining issue was the problem with eyeglasses. Although the requested full face lift was not seen as an insured option, the commission was willing to consider other surgical options to shift skin in the area.(CS88-70)

Temporary subsidy granted

A man's dispute with Revenue Canada about the classification of income was about to jeopardize his eligibility for premium assistance under the Medical Services Plan. Premium assistance is available for 12 months starting each July, based on the previous year's taxable income. If income tax is still in dispute, one has no clear figure to give to MSP for their calculation of eligibility. In this case, the man was arguing that his farm losses should be deducted from taxable income and he had appealed his tax assessment. However, he would have no answer till late 1988.

After he contacted the Ombudsman's office, we enquired with MSP officials and they accepted the man's application for temporary subsidy in the interim. Once his tax appeal was completed, he was granted fully subsidized premium assistance retroactive to July 1.(CS88-71)

Letter to three-year-old questioned

A woman contacted our office to complain that the Medical Services Plan was wasting time and money. Her son had received a letter from the plan asking him to verify that he had received the medical services billed by his doctors. Since her son was only three years old, she thought this was ludicrous and that MSP should think before acting.

We explained to the woman that MSP uses its data base to do random selection of subscribers to verify billing. There were problems in ensuring no letter was sent to a three-year old. However, it is also important to verify services to children. Addressing the notice to the parents, for example, of a 16 or 17-year-old raises the question of the confidentiality of the youth's dealings with his or her doctor. Addressing the letter to the parent in such cases would not be appropriate.

The complainant understood the difficulty of designing a system which would avoid these problems without being exorbitantly expensive.(CS88-72)

Direct billing eases financial pain

The processing of claims to the Medical Services Plan for costs incurred for treatment out-of-the-province has been slow. This can mean individual hardship if a person needing emergency treatment must pay personally and wait for reimbursement. It can also be difficult for the person who does not pay and is contacted by the doctor or hospital for payment while waiting for funds from his home-province's plan. We were able to tell a man in this situation that things will get better. The provinces have reached agreement that all out-of-province treatmen claims within Canada will be billed directly to the home-province's plan rather than to a patient. The removal o that work load should also help by allowing current staf more time to process out-of-country claims.(CS88-73

PHARMACARE

Blood sugar strips not covered

A man whose wife had diabetes was alarmed by th fact that dextrostix strips used by diabetics to monito blood sugar levels were not covered by the Pharmacar program. The strips had recently gone up in price an the man considered the Pharmacare policy to be unreasonable, since the strips are as essential to a diabetic a insulin and hypodermic needles, both covered b Pharmacare.

At the time this man called our office, the Ministry o Health's Hospital Programs was running a pilot progra to teach pregnant women and children under 19 how t use the testing strips. Strips for this population were covered by Pharmacare. The objective of the program wa to reduce long-term costs related to diabetes and hosp tal admissions. Although restricted to this target grou the program was to expand if funding became availabl

Although we were unable to help this complainan we advised him that Pharmacare policies were going to be reviewed by a newly proposed advisory committee. The issue of coverage for dextrostix would likely be reviewed at this time.(CS88-74)

Crisis grant for cancer drug

A man with three months to live was prescribed a drug by his doctor that offered some relief from his cancer. The man was on premium assistance and could not afford to pay for the drug, since it was not covered by Pharmacare. He had undergone three operations plus radiation treatment, all of which had failed to stop the cancer from spreading.

Pharmacare states, and the Cancer Control Agency agrees, that there is evidence to show that the drug prescribed for this complainant is not effective and should not therefore be covered by the program.

We contacted the Ministry of Social Services and Housing. A supervisor agreed that, should the complainant continue to use the drug, the ministry would help offset the expense by issuing crisis grants for his other basic needs. The man was relieved, knowing that he could continue using the only drug that seemed to help.(CS88-75)

INSTITUTIONS

In 1988, our office continued visiting mental health facilities in the province, including Riverview Hospital, the Forensic Psychiatric Institute, and the Maples Adolescent Treatment Centre.

For patients in these facilities, the regular institutional visits provide the access to our office that is available to other citizens in the province. We answered enquiries and investigated complaints from patients and staff alike.

At Riverview Hospital, 1988 brought major changes and reorganization. The hospital became a registered society, the B.C. Mental Health Society, with a Board of Trustees appointed by the Ministry of Health. Many senior staff retired under the government's Early Retirement Incentive Program, and changes took place in the physical environment as well, with the undertaking of significant renovations. The year was also the 75th anniversary of Riverview Hospital.

At the Forensic Psychiatric Institute, a long-awaited expansion project was approved in 1988. This project will provide 30 beds in two wings for men and one wing for women. The institute hopes to have the unit ready by mid-1989. Following our discussion with the director of the institute, the patients concerns committee was reinstituted and we have been working with hospital staff to resolve complaints.

At the Maples Adolescent Treatment Centre, our office dealt with complaints from residents, discussed policy with staff and attended planning meetings to ensure fair treatment of young residents.

Our office continues to be a resource for these institutions in the area of administrative fairness, in policy development and in the fair implementation of procedures.

Access to records granted

On one of our regular visits to the Forensic Psychiatric Institute in 1985, we received a complaint from a man whose request for access to his hospital file had been denied. He had requested the nurses' progress notes, doctors' orders and the treatment plan. At that time, patient access to clinical records was not permitted but we felt that the existing policy should be questioned.

The patients at the Forensic Psychiatric Institute fall into three primary groups: those assigned by the courts for extended residency at the hospital; those assigned by the courts for psychiatric assessment in 30 to 60 days to determine if they are fit to stand trial or, if fit, whether they were sane at the time of the offence; and those who are held for short periods under the Mental Health provisions of involuntary admission.

Our initial correspondence strongly supported the development of a policy which would allow a patient reasonable access to his or her own file during the course of hospital treatment. We felt that the relationship between the resident and health care professionals would be strengthened and perhaps improved by such access. While a patient and doctor generally discuss the treatment plan in full, the patient's ability to correct any misinformation in the file was viewed as assisting in treatment as well as helping to maintain accurate files.

We closed our file in 1988 when the Forensic Psychiatric Institute established a policy allowing a patient access to records. We are continuing to monitor this policy and the requests for access from patients.(CS88-76)

Other Complaints

Grave issue dealt with

A woman with a French Canadian surname was concerned that her marriage certificate and her son's birth certificate were incorrect: both spelled her last name without an accent grave. The women's own birth certificate, issued in Mission, B.C. approximately 30 years ago, included the accent grave.

Our office contacted the Director of Vital Statistics who informed us that all registrations and certificates are now produced internally on a computer system which does not have the capacity to produce accents. We told the director of the complainant's concern, and the directer agreed to find out how other Canadian jurisdictions deal with this problem.

He discovered that only two provinces (Alberta and Saskatchewan) produce certificates with accents as a matter of routine. Quebec, Prince Edward Island and the Yukon Territory do not produce documents with the accent grave; other jurisdictions will produce such documents manually only under exceptional circumstances.

The Director of Vital Statistics decided that our complainant warranted exceptional treatment, and both her marriage certificate and her son's birth certificate were corrected.(CS88-77)

Sex offender assisted in programs

A man who was required to attend a treatment group for sex offenders provided by the Adult Forensic Psychiatric Outpatients Services complained that the program conflicted with a job training program he was trying to take at the same time.

We reviewed the two program schedules and the complainant's criminal record. We felt that both programs provided key social skills that would benefit the complainant. Arrangements were made so that the complainant could attend both programs and he participated well.(CS88-78)

Caveat emptor on septic field

A woman called our office because she had recently purchased a piece of property upon which she wanted to put her mobile home. However, she had been told by the public health inspector that the existing septic field was polluted and that the soil would have to be removed and replaced with clean fill. Neither the realtor nor the appraiser had notified her that this would have to be done.

This particular piece of property had been subdivided many years ago and a trailer had been moved onto the lot without the knowledge of the public health inspector. The septic system had malfunctioned several years before and had never been fixed. A hose was currently carrying the waste water away from the trailer and depositing it on the ground. We concluded that the inspector was acting reasonably and performing his duty by ordering the clean up. He explained to the woman what needed to be done to correct the situation. Although not pleased that she was not aware of the problem prior to purchase, she understood that the health hazard had to be corrected.(CS88-79)

Lot too small for septic field

A man had made an offer to purchase a piece of recreational property subject to getting approval from the public health inspector to install a septic tank system. However, the inspector had visited the site and had concluded that the lot was too small for a standard system. The man called our office for clarification of the approval process. He was also looking for suggestions as to how he might be able to meet the criteria outlined in the septic system regulations and have this lot approved.

We confirmed the information provided to this man with the public health inspector. We then advised the man that he had two options. He could approach his neighbours to obtain a legal easement, effectively enlarging the sub-surface area of his property or he could purchase a more expensive packaged septic system which utilize a smaller ground area.

He was unable to get an easement and found that the packaged system would not meet his needs. He decided to let his offer to purchase the lot expire and look for property elsewhere.(CS88-80)

Ministry of Labour and Consumer Services

A major area of the Ombudsman's work in this ministry during 1988 involved the Liquor Control and Licensing Branch which has responsibility for licensing premises. One specific investigation, involved a complaint about the process by which the Knight St. Pub in Vancouver was issued a licence (see page 12). The publicity resulting from this investigation and report caused a large increase in the number of complaints to this office for this ministry. The ministry undertook its own policy review and our office has made some contribution to areas of that review. The desired goal is a sound, administratively clear policy which all applicants for licensing know in advance and which is consistently applied.

Resolved	44
Not resolved	0
Abandoned, withdrawn, nonjur:	15
Not substantiated	34
Declined, discontinued	89
Inquiries	21
Total number of cases closed	203
Number of cases open December 31/88	27

Knight St. Pub licence investigation

On May 10, 1988 the Liquor Control and Licensing Branch issued a Class D licence for a neighbourhood pub to be located at 57th Avenue and Knight Street in Vancouver. This brought a series of complaints to the ministry. The ministry conducted its investigation and published a report which concluded there was a small area of error, but not sufficient to alter the issuance of the licence. That report and continued concerns in the neighbourhood resulted in numerous complaints being lodged with the Ombudsman's office.

The Ombudsman's investigation confirmed that several errors occurred throughout the licence application process, some of which amounted to negligence on the part of ministry staff. Findings included the following:

☐ There was a premature and improper refusal of an earlier application for a pub in the area. That refusal opened the way for the Knight Street application.

☐ There was a telephoned threat to a ministry employee by the financial backer of the application.

☐ The public referendum required by the legislation was done by a firm inexperienced in conducting pub referendums. Despite its inexperience, the firm was approved by the branch's general manager immediately after getting a supporting telephone call from the premier's principal secretary.

☐ Serious flaws were found in the referendum which totally discredited its authenticity, such as incorrect and ineffective control procedures, questionable rejection of ballots opposing the pub, duplicate ballots favouring the pub and favourable ballots being counted from nine vacant lots.

Our findings indicated that there could be grounds for charges under the Criminal Code and, as a consequence, we turned our findings over to the RCMP for criminal investigation. As a result of their investigation, four people were charged with forgery and pleaded guilty.

The ministry also responded by commencing a legal challenge to the validity of the licence on the basis the licence had been issued in good faith but upon erroneous material presented as fact. The licencee subsequently surrendered the licence.(CS88-81)

Buyer surprised by sales tax arrears

A licensed premise was purchased in a foreclosure sale. After completing renovations and applying for reissue of the liquor licence, the new owners were notified that there were social service (sales) tax arrears of $18,500 that must be paid before the licence would be issued.

The new owners contended that the sales tax arrears were the responsibility of the former owner. The Ministry of Finance asserted that the taxes had been collected by the former owner but not remitted and they therefore became a lien against the property. At this impasse, the owners contacted the Ombudsman's office.

After reviewing this case, we supported the position of the Ministry of Finance. Merchants who collect sales tax do so in the form of trust. The monies in effect belong to the public and legislation provides unusual powers to ensure collection and remittence of these monies. Legislation also requires a prospective purchaser of property to determine if such outstanding monies exist. The vendor can be requested to issue a copy of a clearance certificate, or the purchaser can request a clearance certificate directly from the ministry's Revenue Adminsitration Branch. In 1987, more than 3,600 such requests were made.

The fact that the complainant had neither checked with the vendor nor the ministry was unfortunate. It did not, however, discharge his responsibility to make the payment and thereby meet a public obligation which attached to the premises.(CS88-82)

Methadone treatment sought

A youth activities organization complained to us that a physician who had prescribed methadone to a group of patients refused to continue treating them, with the result that they would no longer be able to receive prescriptions for the drug.

The Ministry of Labour and Consumer Service's Alcohol & Drug Branch is no longer involved in the methadone program. However, we were able to resolve this problem by arranging for a physician to treat the patients through the co-operation of the branch, the College of Physicians and Surgeons and the federal Bureau of Dangerous Drugs.(CS88-83)

Employment Standards Branch

The majority of the complaints that our office receives against this authority centre on the amount of time it takes the branch to settle outstanding wage claims. Few callers to our office realize the relative complexity of the process if the branch has to go to the Order to Pay and Certificate stage (with the appeal periods which must then be observed), all of which adds to the time it takes to get any money into the hands of the claimants. It may be timely in 1989 for the branch to consider publishing a new pamphlet or information sheet for workers that includes an outline of the various stages of an outstanding wages claim.

Brothers questioned IRO probe

Two brothers who had been employed by a private firm on a commission basis in an audit capacity at a hospital thought that their former employer had short-changed them on their wages. They contacted the Employment Standards Branch and filed a complaint. One of the brothers then contacted our office because he thought that the industrial relations officer (IRO) investigating their claim was relying too much on what their ex-employer was saying. In his opinion, the officer should have checked the original hospital records and should not take the employer's records and statements at face value.

Our office declined to investigate the complaint because, in our opinion, the complainants had an adequate available remedy at the branch. We pointed out that an IRO usually examines all relevant information regarding a claim. However, if the results of the investigation are not satisfactory to the claimants then they could request that the director review the decision under the *Employment Standards Act.*(CS88-84)

Outstanding wages sought

A woman's ex-employer refused to pay her outstanding wages for overtime. She said she had spoken to someone at the Employment Standards Branch and was told it would not investigate the matter until she produced proof of the extra hours she had worked. Since she was unable to obtain the necessary documentation from the employer, she was stuck. She called the Ombudsman's office for help.

We outlined this woman's complaint to the area manager. He checked and suggested that the employee contact the local Employment Standards Branch office once again and her complaint would be received. We understand that she did and that she received the outstanding wages.(CS88-85)

Ministry of Municipal Affairs, Recreation and Culture

Complaints to the Ombudsman frequently involve municipal matters which are outside the jurisdiction of the Ombudsman. In such cases, the ministry, or ministry and Ombudsman staff working together, attempt to resolve the concern informally.

Resolved	4
Not resolved	0
Abandoned, withdrawn, nonjur:	2
Not substantiated	8
Declined, discontinued	5
Inquiries	2
Total number of cases closed	21
Number of cases open December 31/88	26

HOGs for strata title dwellings

The administrator of a 21-unit apartment block which was operated as a co-operative housing association complained that individual apartment owners were disqualified from receiving home owner grants because title to all apartments was registered in the name of the association. The apartment owner failed the grant criteria of being the "registered title owner."

Legislative amendments in 1985 made it possible for apartment owners to qualify for the grant. There were three options:

1. Discontinue the strata title status, revert to a single title and apportion the applicable tax to each apartment.
2. Retain the strata title, issue a 99-year lease for each apartment, register the lease at a Land Titles Office and apportion tax payment responsibilities to each apartment owner.
3. Discontinue to strata title and register each title in the name of the respective apartment owner.

Once the apartment administration was informed of these options, deciding the most desirable option was left to the co-operative association.(CS88-86)

Tax relief on destroyed home

Tax notices during 1988 delivered some unpleasant surprises to many taxpayers. We received a complaint from a man who was looking after his son's home while he was away for a year. The home had burned down in the son's absence and his father received a tax notice which included assessment for property improvements when only part of a foundation wall was left by the fire. He approached the municipality for tax relief but was advised that the *Municipal Act* did not authorize a municipal council to remit or refund taxes.

We contacted the Director of Financial Services of Municipal Affairs. He advised that Section 288 of the *Municipal Act* provides a discretionary power for the Minister to direct a municipal council to dispose of the municipal portion of taxes by remission or refund. We advised the complainant to approach his municipal council for a resolution asking the minister for authority under section 288.(CS88-87)

Notice deadline missed

We received a complaint in 1988 from a man who had previously been employed by a regional district. Ten months after his termination in 1985, he commenced a court action for wrongful dismissal. In May 1988, his action was dismissed for failure to provide written notice to the regional district within the two-month period required by Section 755 of the *Municipal Act,* which reads:

"The Municipality is in no case liable for damages unless notice in writing, setting forth the time, place and manner in which the damage has been sustained, is delivered to the clerk within 2 months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes there was reasonable excuse and that the defendant has not been prejudiced by it in its defence."

"Reasonable excuse" has been interpreted by the courts to require such physical or mental incapacity as to prevent the individual from discussing business affairs or giving instructions. Failure to give formal notice within the required time will not be excused, even if the municipality clearly knows of the intention from the circumstances of the case.

As we noted in our 1986 annual report (p. 16 and 17, Formality and the Human Factor), time limits serve a number of legitimate purposes: they encourage claimants to come forward when evidence is fresh and available; they reduce the possibility of prejudice to other parties which can result from delay; they allow administrators to plan their programs better and generally make administration easier and more efficient.

Unfortunately, some people lose out simply through ignorance of the deadline. The arbitrary rejection of claims for failure to meet procedural deadlines imposes certain intangible but real costs on government administration which may be viewed as insensitive or heartless. Further, they create a sense of injustice by those whose otherwise valid claims are rejected for reasons unrelated to their merit.

While this particular case was not within our jurisdiction, our office has recommended to the Minister of Municipal Affairs, Recreation and Culture that, because the limitation period under Section 755 can lead to unjust and oppressive results, the legislation should be reconsidered. We support the British Columbia Law Society's recent recommendation that the section be repealed. Another alternative would be to allow municipalities the discretion to waive or extend the limits so that human factors can be recognized after the interests of all other parties are fully considered. Such discretion could have been exercised to remove the apparent unfairness in this case.(CS88-88)

Ministry of Parks

Historically, complaints involving provincial parks have been few. With the trend towards greater public awareness of all aspects of the environment, an increase in the number of complaints may be expected.

Resolved	2
Not resolved	0
Abandoned, withdrawn, nonjur:	2
Not substantiated	2
Declined, discontinued	
Inquiries	
Total number of cases closed	6
Number of cases open December 31/88	8

No logging trucks on ecological reserve

A man engaged in a private logging business wanted to start logging operations on land he owned adjacent to an ecological reserve. An old, unused and unmaintained road crossed through the ecological reserve. The old road that existed in this ecological reserve predated the reserve's creation. The logger sought permission to use the road to remove his logs, a simple and cheap solution for him. However, this permission was refused. The logger then complained to the Ombudsman.

In our investigation, we analysed the principle behind the creation of ecological reserves. The goal is to maintain a unique natural area in an untouched condition. Any activity and particularly the use of heavy logging equipment to transport logs would be contrary to the concept of an ecological reserve. An alternate route to the logging area, albeit less economical, existed. We found the ministry's refusal to be justified and the complaint unsubstantiated.(CS88-89)

Ministry of Social Services and Housing

The ministry's mandate is to provide social assistance services to individuals and families in need, and to ensure the safety and well-being of children. Great sensitivity is required in carrying out this mandate and the high volume of complaints we receive reflects the extraordinary role that ministry staff are often required to carry out.

During 1988, the ministry undertook a major reorganization intended to provide for a greater functional specialization in the Family and Children's Services, Income Assistance and Handicapped Services divisions. Problems have clearly been experienced by many clients as a result of this reorganization but we recognize the ministry's objective to reinforce the importance of professional practice in ensuring specialized service quality.

The best assurance of fair and responsive intervention in the human service field is the professional competence of the ministry's front line staff. The discretionary functions of professionally trained line staff must then be supported by clear policy guidelines which reflect the intent of the enabling legislation.

Ministry staff deal with human conflict on a daily basis. Human conflicts are most effectively resolved when the parties to a dispute are prepared to seek common ground and to work cooperatively to solve problems. Where children are involved, this consensual approach is particularly important. The onus rests with adults to seek resolutions which are in the best interests of children. However, wherever possible, young people should be participants in the problem-solving process.

In many cases, this office plays a mediating role. Our objective is to seek a fair resolution which is acceptable to all parties and which is responsive to a child's best interests. The merits of this approach to problem solving can be witnessed by the high proportion of resolutions achieved during 1988.

Systems Implications

Individual complaint investigations sometimes result in suggestions for systems improvements. This office's objective in conducting systems studies is to suggest administrative procedures which will lead to a heightened perception of fairness and a reduced level of complaints.

The neutral and cross-jurisdictional focus of this office is unique. The traditional role of an Ombudsman is to monitor fairness issues from an inter-ministry as well as intra-ministry perspective.

Our involvement with this ministry on issues that have systems implications is broad both in its range and scope:

☐ Inter-ministry case management: With seven ministries sharing a mandate for the provision of services to children, youth and families, the need for improved inter-ministry coordination has been identified.

☐ Services to older adolescents: The need for clarity and consistency in structuring the discretionary decisions and recommendations of line staff when considering applications for income assistance from persons under 19 has been discussed with the ministry.

☐ Child Care Contracts: In last year's annual report, we discussed the need for fairness in the administration of contracts. During 1988, the ministry established a task force, chaired by the Superintendent of Family and Child Services, with the objective of establishing provincial standards for child/youth care residential resources. The Ombudsman's office accepted an invitation to participate on this task force.

☐ Child Abuse Handbook: During 1988, an inter-ministry working committee was formed to review and update the handbook. We also accepted the ministry's invitation to participate with this committee. (The revised handbook was published in January 1989).

The Ombudsman's office is also engaged in discussions with the ministry about issues which include special needs adoption, foster care, child protection investigations, services to child victims of abuse (an inter-ministry mandate), outreach services to street youth and services to the handicapped.

Resolved	1,019
Not resolved	2
Abandoned, withdrawn, nonjur.	325
Not substantiated	402
Declined, discontinued	180
Inquiries	185
Total number of cases closed	2,113
Number of cases open December 31/88	316

ADOPTION

'Caucasian' reference offended

In order to find the most suitable adoptive parents, the ministry designs and circulates a pamphlet called "Adoption in British Columbia." A man called the Ombudsman's office to complain about the constant reference to "Caucasian" children in this pamphlet. He felt it may be seen to be offensive to persons from other ethnic backgrounds. He felt that the pamphlet gave the impression that Caucasians were healthy while children from other races were presented as being handicapped in some way. The pamphlet lists children who "have a racial heritage other than Caucasian" under the heading "Special Needs Children".

When we contacted ministry staff, they explained that when the pamphlet was printed, non-caucasion children were hard to place into adoptive situations and on that account were viewed as special needs children. This is no longer the case. In fact, the ministry had already changed its adoption policy and no longer makes any reference to "Caucasian". When a new pamphlet is printed, it will reflect this change.

The complainant was pleased that the ministry had already moved to make this change and he was even more pleased to learn that prospective adoptive parents were apparently no longer distinquishing between children on the basis of ethnic origin.(CS88-90)

Adoptive age restriction removed

People expect to wait some time when they apply to become adoptive parents. However, in this case, the passing of time proved to be a problem. At the time the couple applied to become adoptive parents, the husband was 37 years old. They waited patiently for three years and were shocked to be advised by a ministry social worker that because the husband was now 40, according to ministry policy, the couple was no longer eligible to adopt.

At the time that the parent's lawyer contacted the Ombudsman's office, the ministry was reviewing the age criterion for adoptive applicants and subsequently removed the requirement that applicants be under 40 years of age.(CS88-91)

CHILD ABUSE

Society is becoming more aware of the serious social problems associated with child abuse. Advances in the treatment of child victims of abuse are evident, as are efforts to develop treatment programs for offenders. An increased emphasis has been placed by government policy on inter-disciplinary investigations of allegations of abuse. Police are involved with the ministry at the outset to gather evidence that may lead to criminal charges being laid against alleged child abusers. In many cases, evidence required for criminal proceedings may not be available. The situation often has to be assessed based on the word of a child against that of the alleged adult offender. A growing body of clinical evidence is accumulating which indicates that certain sexual offenders pose great danger of offending against children again. A cure for sex offenders is yet to be found. Life-long controls may be clinically indicated to ensure that children are protected from further abuses by identified offenders. However, situations can arise where a convicted "sex offender" is released from jail and has access to vulnerable children. Based on the past behaviour of offenders, these children may be considered to be at risk. Even though social workers may believe that children are at risk of being abused, they may not see themselves as having the legal authority to take action to prevent the possibility of abuse recurring. This area of policy concern has been discussed in previous annual reports as it relates to the ministry's decision to cease operating a child abuse registry and its ability to track known or suspected abusers. Ministry district office staff may be aware of a known or suspected child abuser having current access to children but may feel that no intervention is legally mandated until a specific allegation is made to them.

On June 28th 1988, Royal assent was given to an amendment to Section 22 of the Family and Child Service Act (S.B.C. 1980 c. 11). This amendment was intended to provide the Superintendent of Family and Child Service with the discretion to disclose information that is necessary to ensure the safety or well-being of a child. This added flexibility may be useful in cases such as the following.

Volunteer coach's criminal record checked

A parent called us with a concern about the safety of children in her community who were participants in a local girls' softball league. She claimed that an adult she knew was convicted of sexually assaulting his young daughter was currently coaching one of the girls' softball teams. She felt this placed the children at significant risk. The woman said she had approached the president of the softball league and was told nothing could be done. League coaches were volunteers and were not subject to what would amount to a very expensive screening process. Criminal record checks were not done on volunteer coaches in this league. The league president said he could take no action unless the woman produced evidence of the criminal conviction.

The woman then spoke to the local district supervisor of the Ministry of Social Services and Housing. He was sympathetic to the woman's concerns but told her that no allegation of abuse had been received and as such, he did not believe the ministry had a legal mandate to be involved. The district supervisor was aware of the previous conviction of the volunteer coach and agreed that he may, indeed, be considered a danger to children. But because of rules of confidentiality, the district supervisor believed he could not share information with the complainant.

We spoke to officials in the office of the Superintendent of Family and Child Service in Victoria who concurred with the district supervisor's judgment that the ministry had no legal authority to become involved in this situation as no specific allegation of abuse had yet been made. Intervention of a preventive nature was not seen to be part of the ministry's legal mandate and this situation was described as a "community problem." The concerned parent was eventually told by local police to speak to Crown Counsel about obtaining information regarding the volunteer coach's criminal record. The necessary information was obtained and the ministry's district supervisor agreed to accompany the woman to meetings with the president of the softball league and the head of the local parks and recreation department. There was an agreement that the issue of screening volunteers would be discussed at an upcoming league meeting. This satisfied the complainant's immediate concerns and she expressed her gratitude to the ministry's district supervisor for his "unofficial" support in her efforts to protect local children.(CS88-92)

Help for youth coordinated

A social worker employed by an Indian band called our office because she was concerned about a 13-year-old Indian girl who periodically lived on the reserve with her father. Her parents, who were separated, were arguing over who should have custody and the band was worried about the welfare of the girl. The girl was rarely at school, had been picked up for shoplifting, had recently been sexually abused and had talked about suicide. The band social worker felt that staff from the Ministry of Social Services and Housing, the agency responsible for the girl's protection, were not working with the native community. We called the district supervisor who explained that his staff had spent many hours working with this girl. However, he was not aware of the band social worker's involvement. He called the worker and opened the door to further communication with the Indian band to ensure a more coordinated approach to planning for this 13-year old girl.(CS88-93)

Serving notice an undesirable disclosure

A woman called the Ombudsman after the ministry insisted her former common-law husband receive notice of a court hearing involving her daughter. The man was not the child's father and the hearing, under the *Family and Child Service Act,* had nothing to do with him. The man had been convicted of sexually abusing this child and the family had moved to an undisclosed location and taken steps to prevent contact with the abuser.

The ministry informed us that they too had concerns about disclosing the location of the woman and her child to the man. However, they had been advised that the act requires notice be served on all persons who have resided in the home as a step-parent to the child. The ministry informed us that the papers were in the process of being served. We requested that this be delayed until a legal interpretation of the act could be obtained. The ministry had attempted to serve them once but the person was not at home. Staff agreed to seek further advise from legal counsel before trying again.

We suggested that section 12(1)(e) of the act permits the court to 'dispense with' the serving of papers. Ministry counsel agreed that the question of notice could be referred to the court for a decision. The ministry put the matter before the court and the court waived the requirement that notice be served.

Ministry staff later informed us that this was probably an isolated incident of miscommunication. Ministry policy provides for requests for waiver of notice and it is an issue that is dealt with in court training for social workers.(CS88-94)

APPREHENSION

Many complaints that we receive about the actions of the Ministry of Social Services and Housing are from parents who have been investigated by social workers based on allegations received by the ministry that their children have been abused or neglected. Under the authority of the *Family and Child Service Act,* the ministry is obliged to investigate all such allegations and when a child is deemed to be in need of protection, social workers delegated with authority by the Superintendent of Family and Child Services may apprehend the child or children. In such cases, presentation to the court must take place.

In most cases, social work investigations do not result in presentation to the court. The outcome of these investigations may be that the allegations are unfounded, in which case ministry involvement ceases; or concerns may be identified and support services offered. In the latter case, the parents' acceptance of the offered services is voluntary although refusal to accept an offered voluntary service may increase the social worker's concerns and could result in a review of the previous decision not to apprehend.

During 1988, we received a number of complaints from parents following ministry child protection investigations where apprehension of the children was not considered to be necessary. Many of these complainants were upset about the intrusive nature of the investigation, unclear about the ministry's legal mandate and feeling uninformed about the reasons for and outcome of the investigation. In some cases, we were able to reassure complainants by providing information from a neutral perspective about the ministry's role and responsibility in ensuring the safety and well-being of children. In other cases, however, we discovered that, notwithstanding policy to the contrary, local practice in some areas did not result in a routine letter to parents indicating that the investigation was completed and outlining its recommendations.

When we contacted the Family and Child Service Division of the ministry, we were informed that policy requiring that letters be sent following the completion of investigations was under review. In December 1988, we were invited to meet with a ministry official to discuss our concerns in this area. We believe that administrative fairness is best ensured when clear and concise written information is sent to parents following investigations which do not result in a presentation to the court. In this way, parents:

☐ have a better opportunity to understand the ministry's legal mandate and reasons for investigation by the ministry;
☐ are provided with a clear, concise explanation of the investigation findings;
☐ are offered the opportunity to question or respond to ministry findings;
☐ where applicable, are offered support services in a clear, unambiguous manner in order to minimize negative interpretation and fears; and
☐ are informed about how the ministry deals with documented information placed on file as a result of its investigation.

We look forward to resolving our concerns in this area of ministry activity during 1989. Our discussions with ministry officials will be sensitive to the reality that some investigations do not result in clear outcomes. Professional social work judgment is required and borderline situations will exist which could be argued to require either apprehension or intensive family support in order to ensure the safety and well-being of the children. When parents do not agree with a social worker's assessment of their need for support and a court is not called upon to decide the protection issue, the expectation of the ministry should be clearly communicated to the parents in a supportive, fair and realistic manner. In this way the child's safety and well-being, while of paramount concern, can be balanced with the parents' rights to fair treatment.

Apprehension raises several concerns

Complainants often have a variety of concerns when the Ministry of Social Services and Housing apprehends their children, as this case shows.

The ministry apprehended six children from a couple, ranging in age from one to nine years due to allegations of the sexual abuse of one of the children by the father. The couple contacted the Ombudsman. They felt the ministry should not have apprehended all of the children acting on the basis of information provided by on of the six children.

To determine if the ministry erred, we reviewed copy of the ministry's file and the report prepared by th Superintendent's office. We interviewed the distric manager and the social worker involved in the apprehension. Based on this information, we concluded tha the ministry had acted in accordance with the *Famil and Child Service Act*.

When there is an allegation of sexual abuse, the ministry must investigate the matter, in consultation with the police. If the children appear to be at risk, the ministry has the authority to apprehend them, place them in care and report to court within seven days. At the report to court, a judge reviews the reasons for the apprehension and considers the risk the children face. The court, at this stage, may decide either to give the ministry temporary custody of the children until there is a full hearing or to return them to their parents' care. In this case, the court made the decision to place the children in the ministry's care.

The parents also complained that the ministry did not provide adequate visiting arrangements and would not permit conversations in their native language. We discussed this concern with ministry staff and arranged for an interpreter to be present so that they could talk to each other in their own language, and ministry staff could be assured that what was said was acceptable. This resolved the language difficulty.

The parents were also concerned about the date for the court hearing. The *Family and Child Service Act* requires that a court hearing be held within 45 days of the apprehension. The couple's lawyer informed us that he and the ministry's lawyer had agreed to a court date beyond the 45-day limit to allow the hearing to be carried out without interruption. As the lawyer had agreed to the court date on behalf of the parents, we felt that the ministry had not acted inappropriately.

The fourth complaint concerned the lack of counselling services after the court had given the ministry a six-month temporary custody order. We discussed this with the district supervisor of the ministry's local office. The ministry agreed to try to arrange for a psychologist who could provide counselling in the family's native language and in their community. They located just such a psychologist.

The parents raised several other issues upon which we commented but did not investigate. The parents questioned:

☐ The actions of the doctor in reporting doctor/patient information to the ministry. The *Family and Child Service Act* requires that anyone who has a reason to believe that a child may be in need of protection must report the concern to the Ministry of Social Services and Housing. This is required by law.

- ☐ The interview of the child by the social worker. We did not assess the quality of this interview. The ministry's information was provided to the court where the lawyers for both sides had an opportunity to cross examine the witnesses. It was up to the judge to decide whether or not the information from the interview was acceptable.
- ☐ The competency of the psychologist to make categorical statements about the family situation to the court. We were informed that the psychologist was registered through the B.C. Psychological Association. He was hired by the ministry to do an assessment of the child and provide the information for the court. We did not assess his competence as an expert witness. However, a complaint was lodged with the B.C. Psychological Association by the complainants.
- ☐ Why the ministry should not be responsible to help with the financial costs resulting from the apprehension. The ministry followed the proper procedures set out in the *Family and Child Service Act*. The apprehension was reviewed by the court. We could find no reason to hold the ministry responsible for expenses incurred as a result of their actions. However, we pointed out that further action may be possible should the B.C. Psychological Association find that the psychologist had acted in an unprofessional way. We advised the couple to discuss this with their lawyer.

This single case provides an overview of many of the issues encountered in dealing with child protection complaints. In most cases, our involvement is limited to ensuring that the ministry has followed proper procedures and that the matter has been referred to the court according to the requirements of the *Family and Child Service Act*. It is the court that makes the decision as to whether or not the ministry acted properly. The Ombudsman's office does not have the authority to investigate court decisions.(CS88-95)

Principal alert on care issue

A school principal telephoned our office because he was concerned about three children, all from the same family, who were attending his school. They arrived regularly at school very dirty, to the point where he had asked them to return home on several occasions to get cleaned up. He had asked the Ministry of Social Services and Housing to intervene and apprehend the children. However, no action had been taken.

We reviewed the family's history with the district manager. The ministries of Health and Social Services and Housing had been working with the family off and on for several years. As a result of our call, two workers spent an afternoon interviewing the children. The workers then advised the parents that if the hygiene of their children did not improve in the next three weeks, the ministry would likely apprehend the children.(CS88-96)

Apprehension before birth?

A citizens' group contacted the Ombudsman's office about the apprehension of a baby by the Superintendent of Family and Child Service before it was actually born. The ministry had received medical information that the baby would be at risk of injury or death in a natural birth and that the mother had refused to deliver by caesarean section.

A Provincial Court judge found that the child was in need of protection and the superintendent had acted properly, but a judicial review before the Supreme Court concluded that the statutory power of the superintendent is restricted to apprehending children who have been delivered live from their mothers.

The Ombudsman's office met with the superintendent while the case was before the courts and was satisfied that this was a matter of extraordinary circumstances. The citizen's group was advised that the courts would ultimately decide and were sent a copy of the final legal decision. In the process of our reviewing this matter, we commented that where hospital delivery practices ensure that a mentally competent woman in childbirth has access to full information, a second medical opinion and adequate counselling, she would be likely always to make a decision in the best interests of her newborn child.(CS88-97)

Mother felt harassed

A single mother with two young children contacted our office with a complaint about the way in which she was being treated by her social worker. Although she had a history of psychiatric problems, the complainant said that she was taking her medication regularly and attending single-parent support groups.

She said she was doing her best to provide proper care for her children but felt that her social worker was harrassing her more than helping her. She had been a ward of the ministry herself for 14 years. Her mother had been murdered and her brother committed suicide.

Following an allegation by a neighbour that she was abusing her children, the ministry sent two social workers to visit the family. The complainant said she felt like she was being grilled by the social workers who appeared to her to be insensitive to her situation. In subsequent contacts with her social worker, she felt that the social worker was patronizing and focused on her shortcomings as a parent.

We discussed these concerns with the social worker and were told that the investigation of alleged abuse had been concluded as unfounded. The investigation also concluded that the complainant needed assistance in her parenting role. The complainant agreed that she could benefit from family support services. The social worker and complainant agreed that better communication was needed to improve the level of mutual trust and support, and both parties agreed to work on this.

To the credit of the social worker and the complainant, we were later informed that the helping relationship had improved significantly. The complainant said that she felt she was now being treated with more respect - "as if I have strengths as well as weaknesses as a parent".(CS88-100)

Father wanted to tell his side

The Ministry of Social Services and Housing apprehended a teenage girl and two younger children when she alleged that her father had sexually abused her. He denied the allegation. Following a social work investigation, the ministry decided to return the two younger children to the father's home. The ministry arranged for the teenager to get therapy but the therapist restricted his contact to the girl which, he asserted, was all the ministry contracted him to do.

The man felt that everyone was believing his daughter and no one was listening to his side of the story. He had taken a polygraph test administered by the police and was found to be credible and believable. The man contacted our office with a concern that he was being treated unfairly.

We contacted the ministry, the therapist and the police. The position taken by the ministry and the therapist was that they had no reason to disbelieve the girl's story which had been consistent over a period of time. The ministry social worker and the investigating police officer also said that the father appeared to them to be credible.

Following lengthy discussions with all parties, funding arrangements were made to permit the therapist to see the father. While guarded in his prognosis, the therapist's clinical assessment was optimistic, that, over the long term, the relationship between the girl and the father could be improved to the benefit of both parties. In the short term, the father indicated that he would not contest the ministry's application for custody because the girl did not wish to return home at that time. The complainant was pleased that he could now be involved in theraputic attempts to improve this situation and felt that the matter had been resolved.(CS88-101)

No 'list' of child abusers

A woman went away for a weekend and returned to the news that the ministry had received an allegation o her abuse of her stepdaughter. An investigation had been conducted and the ministry concluded that some form of abuse had occurred. The ministry did not feel i necessary to apprehend the girl since her natural fathe was living with her. However, the woman was concerned that she was now listed somewhere as being a child abuser. She felt that she had never been given an opportunity to address any of the concerns and she asserted that her stepdaughter had a history of attempting to play one parent against the other. She subsequentl called the Ombudsman to express her concerns.

When we contacted the district supervisor, he agreed that the investigation in this case had not been wel done. Although he was not in the office the week the allegation had been received, he stated that four majo investigations had been done that week and staff had been extremely busy.

In an attempt to address the woman's concerns, he invited her to meet with him. Two such meetings took place. The woman was eventually satisfied that someone had heard her concerns and that all had been done that was possible to prevent a similar situation from developing again. She was informed that there was no lis of 'child abusers' as such but that the ministry would maintain a file detailing the results of the investigation.(CS88-103)

Notification notation needed

A young boy in the custody of a single father was apprehended by the Ministry of Social Services and Housing while in the care of his mother, the father's ex-wife as the result of allegations that he had abused the child The child's mother lived in another community some distance from the father's home.

The man said that the matter had been referred to court within seven days as required by the *Family and Child Service Act* but he had not been informed of the report to court so he did not attend. When he found ou about it, he complained to the Ombudsman about this lack of notification. The father was also concerned tha the ministry had failed to provide for necessary eye surgery which had been scheduled prior to his son's apprehension.

We contacted the district supervisor about the matte of notification and were told the social worker recalled informing the man of the report to court but made no notation of this on the file. The supervisor has since directed the staff to note the particulars of notification in the file records. The complainant agreed that further investigation would be of no value since it was now some time after the event had occurred and the matter was going to court for a hearing. We believe, however, that i is the parent's right to be informed of the initial step in the court process so that effective representations can be made at that time.

We also raised the matter of the eye surgery with the ministry. Staff assured us that they would ask the child's mother to take him to an opthalmologist in a nearby city to have the condition attended to. This resolved the father's concern.(CS88-104)

Therapy for past traumas provided

A young man had been in the ministry's care for a number of years up to the age of 19. As he became older, he began to recognize that he needed counselling for emotional difficulties. During the course of the counselling, he came to recognize that certain events that had happened to him as a foster child were affecting his emotional well-being. In particular, he alleged that he had been sexually abused by a foster parent.

Through the counselling process, the complainant made good progress in dealing with things that had happened in his past. However, because he had initiated the counselling on his own, he was paying in full for his psychotherapy. The total costs had come to approximately $1,300. He contacted the Ombudsman to see if the ministry would pay those costs.

We requested a report from the complainant's psychologist. This report outlined the complainant's background and some of the experiences he discussed with his therapist about his childhood. It also described the progress he experienced as a result of the therapy. We also contacted a psychiatrist who had worked with the complainant to seek his opinion as to whether or not the complainant's need for therapy was related to his care as a foster child. The psychiatrist advised us that the counselling the complainant sought and paid for was instrumental in overcoming his emotional and psychological problems.

After our representations, the ministry agreed to pay for the psychological services provided. The complainant said that he appreciated the fact that the ministry was willing to listen to his concerns and take the step in resolving the matter. He felt that this would help him put this period of his life behind him. We wrote to the ministry suggesting its response demonstrated to the complainant that the superintendent is concerned about his needs as a young adult. The issues faced by children and adolescents who grow up in care do not disappear simply because the person reaches the age of 19. The actions of the ministry in responding in a caring way are to be commended.(CS88-106)

Mother sought contact with children

A woman contacted our office when the ministry would not let her continue to visit with her children, aged eight and 11 and permanent wards of the ministry for approximately 16 months. The woman told us that the children wanted to maintain contact with her and that she was concerned that if the children were adopted out all contact would be terminated.

When we discussed the matter with the ministry, staff agreed that, due to extenuating circumstances, continued access by the natural mother would be permitted, provided that she did not interfere with foster or adoption planning. The ministry did point out to her, however, that it could give no guarantee that access would continue if the children were adopted because it had no authority to impose such a condition on adoption.(CS88-107)

APPREHENSION FILES

We frequently receive complaints that the ministry should not retain information at all when a child protection investigation results in an unfounded outcome. When an apprehension takes place, the child's name and the names of other family members are placed on a computerized central registry. The names are cross-referenced so that if the name of any family member is entered into the computer, it identifies the district office where the child's files are retained. If the ministry investigates a child protection complaint and determines that the complaint is unfounded, the information is destroyed after two years. We believe that the ministry policy of handling closed files in this way is reasonable.

There has been a mistaken belief within the ministry that the Ombudsman Office recommended that the central registry be abolished. This is in fact not true. Rather, the Ombudsman recommended that procedures of administrative fairness be applied to the retention of such information. Such procedures would require proper notification for persons whose names were placed on file and proper appeal procedures to review the decision to maintain the name on record.

Our office continues to be concerned that there is no mechanism to track individuals who may be abusing children but who have not been convicted due to insufficient evidence or other circumstances that precluded the laying of criminal charges. However, such a mechanism must take into account the rules of administrative fairness. The issue is discussed at more length in Section C of the introduction to this report.

Abuse allegation records kept

A man complained to the Ombudsman's office after he learned that the Ministry of Social Services and Housing was retaining records of a child protection investigation involving his daughter after the court had ruled that his daughter was not in need of protection.

We explained to this man that the *Family and Child Service Act* enables the ministry to keep records and that ministry policy spells out how this will be done. We told the complainant that we felt this policy to be a fair one.(CS88-108)

'Unfounded' files kept two years

A woman called us with a concern about the ministry's policy of retaining a file on her and her husband, even though an allegation that they had abused their child had proven to be unfounded. The couple thought that the anonymous allegation had been made maliciously by a neighbour with whom they did not get along.

To our enquiries, the ministry responded that their policy was to keep "unfounded" files for two years and then destroy them if no other ministry involvement was required. The caller was upset because her husband was up for promotion and she was fearful that his employer may find out that the ministry had a file on them.

We suggested that the couple meet with ministry officials to discuss their concerns and request that the ministry place reference letters on their file. We also pointed out that the ministry's investigation would indicate an "unfounded" finding on their file, evidence that, as far as the ministry was concerned, they had not abused their children. After the meeting with ministry officials, the woman called us to say that she understood why the ministry retained files and that she felt that the file's existence, indicating that the allegation was unfounded, was a protection for them.(CS88-109)

CONFIDENTIALITY

Investigation, not notification

A woman complained to the Ombudsman that the ministry had unfairly notified her methadone clinic that she was under investigation for alleged fraud. As a result of this action, the clinic had threatened to terminate the treatment program for both the complainant and her husband.

After reviewing the matter, we found that the ministry had contacted the clinic in the normal course of fraud investigation, which included investigating allegations that the complainant had been selling her methadone. We did not substantiate the complaint.(CS88-110)

Breach of confidence brings compensation

In April 1987, a 17-year-old called our office to complain that a ministry social worker had breached a confidence. The social worker had told the guardian of his ex-girlfriend that the complainant had homosexual tendencies. The ex-girlfriend had then spread this story to schoolmates causing so much stress to the complainant that he was hospitalized for five days.

Over a 19-month period, our office discussed this issue with ministry officials. Local officials of the ministry sympathized with this youth and his treatment, and recommended that damages be paid to cover one term of educational expenses because, by this time he was enrolled in a college program. Appropriate disciplinary action was taken with the social worker.

While ministry officials at all levels expressed sympathy with the youth's complaint, it was only after a number of months that a way was found to compensate him for the manner in which he had been treated. A final settlement of $785 was arranged and this resolved the matter to the satisfaction of the complainant.(CS88-111)

Apology accepted for disclosure

A woman's ex-husband initiated action to have the amount of his maintenance reduced. In the course of proceedings, it was learned that a mental health counsellor had disclosed confidential information about the woman. The woman was concerned this information would have an adverse effect for the outcome of the maintenance hearing.

We contacted the counsellor's supervisor who agreed to cooperate with the woman's lawyer in an effort to minimize the negative effects of the information in the court proceedings. In addition, the worker wrote to the complainant expressing regret for the problems.

Although we could not turn back the clock, the woman felt that the actions of the ministry resolved her concern in the best way possible.(CS88-112)

File sealed from small town chatter

A woman who lived in a small community was concerned that future employees at the local mental health office may be personal acquaintances who would have access to the information in her file. She wanted her closed mental health file to be "sealed" to prevent unnecessary access to the information it contained. She contacted the Ombudsman.

We contacted the mental health unit about the complainant's concern. It was agreed that the file notes be sealed in an envelope in the file. The complainant could check the envelope at a later date if she wanted to ensure that it remained sealed. This simple step on the part of the ministry resolved the complainant's concern about access to her file.(CS88-113)

CONTRACTS

Payment delays a problem

A woman was under contract with the ministry to provide a residential child care program to adolescent victims of sexual abuse. Although she had received glowing reports about her program's effectiveness in working with victimized and often rebellious youth, she was frustrated in some aspects of her contract related to financial administration.

She was being paid at a regular group-home rate and felt that the treatment services being provided to adolescents within her program were deserving of a higher, specialized-resource rate. She also experienced delays in payments resulting in her having to arrange for bank overdrafts to cover payroll and operating expenses. She complained to the Ombudsman.

When we contacted the ministry's area manager, we got a sympathetic response. Attempts were clearly underway to respond to the complainant's concerns. It was acknowledged that this was a valuable resource in great demand from within the region as well as from other regions which lacked such a resource.

It was pointed out to us that programs aimed at resistant youth who were also victims of abuse were expensive. Many of these youth were street kids and the process of engaging them to leave the street was expensive, requiring considerable staff expertise and commitment to long-term involvement.

The upgrading of this particular resource from its original group home status to one of specialized resource would have to be achieved within regional budget allocations. This could mean a difficult juggling of priorities and the possible need to reduce the amount paid to some resources in order to upgrade others.

The ministry's regional management was responsive to the issues raised in this case and additional funds were approved at the specialized resource rate. The complainant later reported that she had received her regular payments on time and was pleased with the resolution.

The demand from other regions to access this resource raised questions about the availability of such programs in all areas of the province. Resistant teenagers, often victims of sexual and physical abuse, are traditionally difficult to serve. A strong commitment to ongoing research and evaluation of successful programs will be necessary to develop cost-effective responses in all regions.(CS88-114)

15-day payment promised

A day-care centre contacted our office with a complaint concerning delay in receiving payment from the ministry's Day-care Accounts Section. Delays of up to a month were not uncommon, resulting in a large operating short-fall. On occasion, this has meant that the day-care operators had to use money from their personal savings account to pay their staff.

When we enquired, the ministry told us it planned to move to a fully computerized billing system as of April 1, 1989. The new system, which eliminates coupons, will shorten the present 15 working-day turnaround to eight days. Further, electronic deposit will be offered to all care-givers. The result is that the billing process will be greatly streamlined. In the future, the only delay will be that caused by Canada Post, and if the electronic deposit option is chosen, the only delay would be in the initial mailing of the billing form.(CS88-115)

New programs concern agency

For 19 years, a non-profit society provided residential child and youth care services under contract to the Ministry of Social Service and Housing in a community. Following a review and an audit by the ministry, significant changes were proposed which included the restructuring and downsizing of the agency's services.

Contract negotiations between the society and the ministry, based on the ministry's plans for reorganization, stalled. The society's board and staff had concerns about the proposed reorganization and felt that the audit process and outcome had been unfair. The board felt that a neutral perspective was required and invited the Ombudsman's office to play a mediating role.

Following preliminary consultations with the ministry's regional director and area manager, an Ombudsman officer visited the community with the objective of seeking a resolution to the contract difficulties. The agency agreed to table its concerns about the audit report for future review, since the ministry's regional director asserted that this report was not relevant to the current contract negotiations.

In our discussions, common ground was apparent in ministry and agency philosophies about the provision of local community resources for children and youth in the care of the ministry. The society board and staff agreed with current trends towards de-institutionalization and were comfortable with attempts to downsize the current 14-bed facility. The society was, however, concerned about the continued commitment to provision of child and youth residential treatment facilities in their community, citing numerous examples of youth in need of such programs. They were skeptical about the ability of proposed 'parent/counsellor homes' to deal with severely disturbed teenagers.

The central issues in the discussions were:

☐ how appropriate the proposed six-bed reception/assessment centre and parent/counsellor homes, would be to the target population defined by the ministry;

☐ what level of staffing and types of skills were required to work effectively and safely with the defined youth population.

To alleviate agency concerns that the proposed new programs may not be provided with adequate resources to deal safely and effectively with the needs of "severely disturbed, suicidal or violent youth" (seen by both the ministry and the agency as inappropriate for the proposed new programs), it was agreed that a clear definition of the target population and screening and monitoring mechanisms should be spelled out in the contract.

We suggested a strengthening of liaison between ministry staff and the agency board, information-sharing about the proposed new program and a community inter-agency review of service needs for psychiatrically ill and violent youth who would not fit into the proposed new programs.

The dedication and commitment of the agency's volunteer president and board, and the staff was clearly evident. We were similarly impressed by the willingness of the ministry's area manager and regional director to engage in a creative process of problem solving. A contract extension agreement was reached and it is hoped that this longstanding relationship will be reaffirmed with the signing of a new contract during 1989.(CS88-116)

FOSTER PARENTING

Children abused in foster homes

The ministry is developing a series of standards for foster homes and foster parents to ensure that children are well taken care of while in foster care. When there is a report of abuse in a foster home, the ministry will investigate and take action if necessary.

In one case, the Ombudsman's office received a complaint that two sisters had been apprehended and placed in separate foster homes. Both were subsequently abused. The ministry had already investigated and taken action. We confirmed that one of the girls had been inappropriately disciplined - her mouth was washed with soap for swearing and she was slapped by one of the foster parents. Ministry policy permits no use of physical punishment for children in foster care. The girl was moved from that home and it was closed as a resource. Her sister was placed in a foster home where she was sexually assaulted by another foster child who was residing there. Her assailant was charged and convicted and the ministry made counselling available to the girl. Ultimately both girls were returned home to their parents.(CS88-117)

Some comfort in knowing whereabouts

A native foster mother had understood that she wa the guardian of a native girl. She had cared for her and other children for several years. One day while the foster mother was away from the house, someone complained that a babysitter in the household was unable to manage. As a result, two of the children, including thi particular native girl, were apprehended. One child wa returned to the house the next day, but this native gir was not. The foster mother tried for several years to find out what had happened but to no avail. Finally, she complained to the Ombudsman.

The district manager for the ministry in the area where this woman lived explained to us that the girl had refused to return to the foster home. She had preferred instead to move and live with her natural sister and the sister's foster parents. The girl had made no attempt to contact her previous foster mother. We explained this to the foster mother. Although it disturbed her to learn the girl had not wanted to return to her, she was comforted by the fact that she now knew what had happened and that the girl was doing well in her new home.(CS88-118)

Mother must be kept from daughter

A foster mother had been told that she could keep her foster child only as long as the child's mother stayed away from the house. The child's mother was an alcoholic and had caused problems for her daughter. The foster mother had learned, however, that the natura mother had become very sick, was living on skid road and needed care. She wondered whether she could be the one to provide the care and still continue to raise her foster daughter.

We talked to the district manager who confirmed that the daughter's safety and well-being continued to be the priority. However, the manager was prepared to review the situation if the mother returned to the foster home and would not automatically remove the daughter from the home.(CS88-119)

Parents felt system failed son

The adoptive parents of a 14-year-old youth with special needs contacted us in November 1987 with a concern that their child was not receiving the services that were required to address his problems. The young person was described to us as having learning disabilities and behaviour disorders, with associated medical and psychiatric problems, and that he lacked appropriate social skills.

When their son was seven, the parents learned that he had suffered minimal brain damage at birth. Various types of treatment had been tried without great success.

The ministries of Social Services and Housing, Health and Attorney General, plus school board personnel were involved but the parents stated that few appropriate resources appeared to be available in B.C. to meet their son's needs. In desperation, they sent him to a residential treatment program in the United States.

Through our office, the parents learned of the availablility of the ministry's Intensive Child Care Resource (ICCR) and their son was placed in this program early in 1988. For a while the parents felt things were going well with intensive child care and special education supports, but this did not last. Their son became engaged in serious criminal activity and with the assistance of our office and the parents' lawyer, an admission to the Maples Adolescent Treatment Centre was arranged.

In the immediate sense, this resolved the concerns of the parents whose primary goal was to ensure that their son receive the best clinical help that was available in the province. Upon reflection these parents felt that the system had failed their son by not being more responsive at an earlier age when intervention and special education programs may have had a more positive impact.

The struggle of this family, from the time they decided to adopt a special needs baby, to their current efforts to obtain services for a disturbed adolescent son, raise important questions about the organization and administration of inter-ministry services to special needs children. These parents came forward in the hope that sharing their experiences would lead to improvements in the system of care and treatment provided to special needs children at the earliest possible time.(CS88-120)

Payment for care at issue

A native woman called our office because she believed she had been promised one thing by one social worker but had been told something very different by another. She told us that she had been asked by a worker to care for two Indian children who had run away from their foster home to her house. She agreed to do so on the understanding she would be paid the foster care rate once she submitted her restricted foster home application. She looked after these children for four months, a new worker was assigned and, because of a criminal history, her application to foster was rejected. As a result, she did not receive any money. We called the district office. Both workers agreed that she had provided a service to two very difficult children when no one else was willing to. Upon hearing the story, the area manager agreed to issue a cheque as soon as the children's stay in the woman's home was confirmed by the workers.(CS88-121)

Foster rejection upsetting

A woman had been asked by her friend if she was interested in looking after the friend's handicapped child. This woman agreed and applied to be a restricted foster home parent. Upon completion of the application study, a social worker tried to contact the woman at home to tell her that her application had been rejected. Before the social worker reached her, however, the woman was told of the outcome by the friend who made the original request. As a consequence she went to work in an agitated state. Her boss noticed how upset she was and told his fiancee who also happened to work at the ministry office. The fiancee told the social worker who then came to this woman's place of employment to talk to her.

The woman called our office to complain about the incident. She felt that:

1) the social worker should not have gone to visit her at work,
2) she had never been told why she had not been accepted as a foster parent, and
3) she had not been given a chance to respond.

Although this woman perceived the process to be unfair, we reviewed the reasons for the decision and the source of information and concluded that the ministry had made a reasonable decision. Given the perception of unfairness and the woman's confusion about her application request, we also felt that clear reasons for the decision should be given. The social worker agreed to meet with the woman and provide her with an explanation.(CS88-122)

Concern that mother was her pimp

An 18-year-old permanent ward called us to complain that her social worker would not let her live with her mother. The complainant was seven months pregnant and wanted to return to her mother's home to have her baby.

When we contacted the ministry, the girl's social worker told us that the girl had testified at a court hearing that her mother had been pimping for her while she was prostituting. The social worker was also concerned that the girl may still be prostituting even though she was seven months pregnant.

We encouraged the complainant to make contact with her social worker. The girl eventually agreed, moved into a foster home and shortly thereafter went into hospital in preparation for the birth of her baby.(CS88-123)

Parents need foster child's history

A foster parent couple contacted our office after they experienced serious problems as the result of sexual activity between children in the home. The children had been placed in their care by the ministry but they were not informed that the children had been sexually abused. The couple felt that, if they had been properly informed, they could have responded more effectively to the needs of the abused children and other children in the family.

During our investigation, we found that the information on file and the information from the staff we interviewed was inconclusive on what the couple had actually been told when the children were placed with them. When we raised the issue with ministry staff, we were informed that since the time that this family had experienced the problem, much had been learned about the effects of sexual abuse on children. Ministry policy now requires that foster parents be informed of the child's history, family situation and "observations and known behavioural assessment."

Since this event had occurred a number of years ago and could not be rectified, and since steps were being taken to minimize the possibility of this type of problem recurring, we discontinued our investigation.(CS88-124)

INCOME ASSISTANCE

WCB hardship award returned

A man complained that the ministry had taken almost all of his Workers' Compensation pension. The pension was based on $7.50 per month but was paid out in a lump sum intended to represent his lifetime pension.

After our enquiries, the ministry agreed that the only money actually owing to the government was the sum of $7.50 for each month his hardship benefits concurred with the pension award. The ministry subsequently issued a refund cheque to the man for $2,139.53.(CS88-125)

Error meant $10,000 refund

A man complained that on several occasions, the ministry had wrongly taken money intended as compensation by the Workers' Compensation Board.

When we reviewed the matter, we found that the man's income assistance file indicated that the ministry had received three large disbursements from the WCB. However, it was not clear that the man had ever received hardship assistance, the only form of assistance for which the ministry can request repayment. Further, the ministry can only accept payment for hardship assistance issued concurrent to the period of time that WCB benefits were paid and then only for the amount of hardship assistance issued.

We asked the ministry's Income Assistance Division to review the matter. After reviewing the file, the ministry agreed that an error had taken place. A cheque for $10,328.84 was issued to the man. We considered this to resolve the complaint.(CS88-126)

Child's education at stake in grant

In September, a woman complained that the ministry would not assist with the cost of transporting her child to a distant school-bus stop. The ministry had taken the position that the family chose to live in a remote area, thereby increasing its own expense, and that transportation costs could be recovered from the local school board. The woman informed us that the school board usually began providing gas money in mid-November. Meanwhile, her child would miss classes.

Although the Ombudsman has no formal jurisdiction over school districts, we contacted the school board to see if transportation payments could be advanced. The board was considerate and helpful. Their payment system requires that the child be enrolled and in attendance for one month before expense claims may be processed. However, they offered to 'rush' the processing so that the family could be paid in mid-October, a month earlier than they anticipated.

The ministry was still reluctant to issue a crisis grant for the September and part of October's fuel expenses, as it had just paid the complainant's large Hydro bill. However, when we pointed out that the child was in danger of missing about six school weeks, the district supervisor agreed to issue a fuel voucher, but only 'on assignment'. This meant that the family would be expected to repay the ministry for the assigned funds. Assignments are normally given out only in rare cases where the borrower is anticipating a substantial amount of income, such as a Workers' Compensation Board award. We contacted the Income Assistance Division in Victoria to confirm the statutory authority to require an assignment for transportation vouchers. There is none. Consequently, we suggested to the district supervisor that the ministry issue the fuel voucher as a crisis grant, a payment which is not recovered. The ministry agreed.(CS88-127)

Unemployable status extended

A single mother complained to the Ombudsman that the ministry was requiring that she begin searching for a full-time job. Her unemployable status had terminated when her baby reached the age of six months. The baby was now eight months old but was still breast-feeding despite her attempts to wean it. She felt it was impossible to look for work while still breast-feeding the baby.

When we discussed this with the ministry, officials agreed to reinstate the complainant's unemployable status for another few months if she provided a letter from her physician explaining her difficulty in weaning the baby.(CS88-128)

Dietary difficulties, special needs

A woman complained to us that the Ministry of Social Services and Housing had failed to provide for the timely delivery of the product "Ensure", a dietary supplement medically required by both the woman and her teenage son.

While the woman's son had a history of dietary difficulties requiring the prescription of a supplement such as Ensure, the ministry had no record of any earlier request for the product by the woman for herself. After confirming the medical need for the product with the woman's physician, the ministry arranged for the delivery of the product each month. Thus, the problem was resolved.(CS88-129)

Tribunal decision ill-based but final

The ministry decided to terminate a woman's income assistance benefits alleging that she was involved in a common-law relationship with a man whose income made the couple ineligible. She appealed this decision and lost, but contacted our office when she felt that the chairperson of her appeal tribunal had unfairly refused to consider evidence she submitted.

We spoke with the chairperson of the tribunal and found that he had a misunderstanding of the role of an appeal tribunal convened under the *GAIN Act Regulations*. As a result of our further discussion with the ministry, the ministry agreed not to use this individual as a tribunal chairperson in the future.

Unfortunately for this woman, the tribunal's decision remained final and binding. Our jurisdiction to investigate the actual decision of the tribunal is limited and there was little else we could do for her. However, as we explained to her, she did have the right to pursue the matter to the courts under the *Judicial Review Procedure Act*.(CS88-130)

Extra funds needed for glasses, dentist

A woman complained that the ministry had refused to assist her family to meet emergency needs. The family was technically not eligible for income assistance because the woman's husband was a full-time student sponsored by the Unemployment Insurance Commission. The family of four had been surviving on the husband's unemployment insurance benefits of $784 per month, less than a family of four would have received on income assistance. The "emergency" arose when the woman's six-year-old son dropped his glasses and another child stepped on them. The lenses were shattered. The family's optician was willing to repair the frames for free, but was unable to provide the lenses without charge. The woman also had another problem. She had a tooth which had cracked, causing extreme pain. The ministry had refused the woman's request for assistance to replace her son's glasses, needed for school, and to help with the cost of extracting the painful tooth.

After the intervention of our office, the ministry agreed to provide for both the boy's lenses and the woman's dental needs under its 'hardship policy.'(CS88-131)

Landlord's intimidation avoided

A woman complained that the ministry had mailed a cheque for the rent portion of her income assistance to her previous landlord. Her income assistance benefits were being administered by the ministry to help her cope financially. She had provided the ministry with advance notice of her change of address but the ministry had failed to correct the address on file and the cheque had been mailed to the wrong landlord. The ministry requested that she get the cheque back from the landlord so that it would be cancelled and a new cheque issued for the current landlord. The woman objected to this because she was afraid the landlord would keep her security deposit if she caused any difficulties. He had also refused to return her repeated phone calls which meant she would have to deal with him in person. She was quite intimidated by that prospect.

As a result of our enquiries, the ministry agreed to cancel the cheque to the first landlord and reissue a second cheque for the complainant's current landlord. The ministry also agreed to deal with the first landlord directly.(CS88-132)

Mistaken deduction rectified

A woman contacted our office with two complaints concerning the Ministry of Social Services and Housing. Firstly, she argued that the ministry had been unfairly deducting $10 from her monthly income assistance cheque and she felt she ought to be receiving more money for her shelter expenses.

When we contacted the ministry, staff were unable to explain what the $10 deduction was for and agreed to cancel it. An cheque for $10 was issued to make up the difference for the current calendar month. Future cheques would be issued without this deduction.

The problem of the shelter expenses was resolved when the complainant agreed to submit a receipt for her propane tank rental, the only shelter expense not documented. The ministry then adjusted her shelter variable accordingly.(CS88-133)

Security deposit sought from ministry

A woman complained to the Ombudsman when the ministry refused to provide security deposits to income assistance recipients wishing to live in one of her rooming houses.

We found that we had investigated this same complaint in August 1985. At that time, we explained to the woman that, because she operated under the *Hotel Keepers Act* and not the *Residential Tenancy Act*, the ministry had no obligation to provide security deposits to income assistance recipients. However, there is nothing to prevent the woman from demanding a security deposit of such recipients. If they fail to provide it, she can simply refuse to rent them a room.

We found the woman's circumstances unchanged since 1985. She continued to operate under the *Hotel Keepers Act*. We confirmed our earlier findings that the ministry is not required to provide security deposits to income assistance recipients.(CS88-134)

Amputee's motorcycle insurance covered

A man complained to the Ombudsman that the ministry had refused to cover the cost of insuring his motorcycle. The man was classified as "handicapped" due to the amputation of one leg and used the motorcycle as transportation instead of a wheelchair. He argued it was more cost effective to insure the motorcycle than to purchase a new wheelchair.

We discussed the matter with ministry staff who agreed to cover the cost of insuring the motorcycle for a full year, less $100 which the man covered with his own savings.(CS88-135)

Medical coverage arranged

A man complained that the ministry was not providing sufficient help for the family with a quadraplegic child. The 15-year-old boy had broken his neck in a tragic swimming accident a year earlier. As a result of the boy's condition, the family faced considerable medical expenses. Since the boy's father was classified as employable, the family received only basic income assistance. Medical bills were paid by way of emergency vouchers, an administratively onerous form of payment.

The problem was resolved when the ministry placed the boy on ministry-sponsored medical coverage and arranged for the family to obtain medical supplies directly from the supplier and billed to the ministry.(CS88-136)

Doctor's handwriting the problem

A woman complained that the ministry had refused to grant her a daycare subsidy, even though she had given her social worker a letter from her doctor stating that her husband was not physically fit to care for their children.

The problem was resolved with a second letter. The first letter was in illegible handwriting with an illegible signature. The second was typed on letterhead and accepted by the ministry which then authorized the daycare subsidy.(CS88-137)

Ministry apologizes for rude reception

A woman complained to the Ombudsman that the receptionist at a ministry office was rude and impolite. She had taken time off work to see a social worker to discuss action under the *Child Paternity Support Act* but found that the social worker was not in. Apparently, she had not understood the correct date for her appointment. When she asked the receptionist to check the appointment book for the correct date, the receptionist refused.

This complaint was resolved when the ministry apologized to the woman for the behaviour of the receptionist. The receptionist was also counselled regarding her attitude towards clients. Further, the ministry rescheduled the woman's appointment to a more convenient date so that she would not have to take further time off work.(CS88-138)

Withheld security deposit now a debt

A man complained to the Ombudsman when the ministry required that he pay $247.62 awarded to him by Small Claims Court from his ex-landlord for withholding his security deposit.

We found that the ministry had originally paid the man's security deposit on the understanding that it be repaid when returned by the landlord. Therefore, the security deposit constituted a debt owing to the ministry. In addition, the accumulated interest was unearned income and must therefore be deducted from the man's income assistance. We therefore did not substantiate the complaint.(CS88-140)

Status clarification brings benefits

A man complained that the ministry had unfairly denied him and his family income assistance because he did not have "immigrant" status. The family recently arrived from Fiji and was awaiting a hearing on their refugee status scheduled for January 1989.

Canadian citizens, permanent residents, holders of ministerial permits (in special circumstances) and those claiming refugee status (who are not eligbile for federal adjustment assistance benefits) are eligible for income assistance. This case was resolved once the ministry received the appropriate documentation from Canada Employment and Immigration confirming the family's status as refugee claimants. Once the question of status was clarified, a cheque was issued for the family.(CS88-141)

Late maintenance lowers assistance

A woman complained to the Ombudsman's office that the ministry would allow her to keep only $100 of the $575 she was to receive in maintenance arrears. She felt this was unfair since it penalized her for her ex-husband's delinquent payments.

We were unable to substantiate this complaint. The *GAIN Act*, Regulations allow an exemption of only $100 in maintenance each month for income assistance recipients with dependents. Unfortunately, this does have the effect of penalizing the woman for her ex-spouse's delinquent payment. She is allowed a single $100 payment instead of $100 for every month the maintenance was actually in arrears.(CS88-142)

Ministry, denturist at odds

The manager of a facility for the mentally ill contacted our office on behalf of one of his residents. She had gone without dentures for nearly two years. In addition to her mental illness, the resident suffered from epilepsy and a speech impediment caused by a stroke following brain surgery which was intended to help alleviate her epilepsy. She had received her dentures in March 1986 but had a seizure shortly after and broke them. Since ministry policy restricts replacement of dentures to once every five years, the ministry had refused to cover the cost of replacement.

The ministry argued that the woman's practitioner should have provided her with cast chrome dentures, rather than the acrylic dentures which broke, and that he should bear the cost of replacement. The practitioner argued that he could not have known that the acrylic plate would not be strong enough and further pointed out that abnormalities in the woman's mouth would have required acrylic plates before manufacture of the cast chrome dentures he now advocated. Thus, the ministry and the practitioner were at a stalemate.

We contacted the ministry which, after discussion, agreed to waive its policy and provide for a new set of dentures of cast chrome, provided that the complainant deal with a different practitioner.(CS88-143)

Common-law relationship, or boarder?

A woman complained that the ministry had unfairly threatened to terminate her income assistance benefits unless she reapplied with her boarder as a common law couple.

We were unable to substantiate this complaint. The woman had recently been involved in a custody battle for her children. During the hearing, she had testified that she was involved in a stable common-law relationship with her boarder. On this account, the ministry requested that she and the boarder apply as a couple so that the ministry could consider their joint income and assets. This did not seem unreasonable.(CS88-144)

Day-care worker points to extra subsidy

The caller was concerned that a single mother may not be receiving the level of day-care subsidy to which she was entitled. The caller was an experienced day-care mother who was providing care for the mother's six-year-old while the mother worked at a job which required her to work evening shifts. The mother was receiving $131 per month day-care subsidy. The caregiver felt she was eligible for $210 per month.

When we contacted the ministry, the district supervisor discovered that the mother had not informed the ministry that she was working shifts. The mother was told to contact her ministry worker and new coupons would be issued at the rate of $210 per month.(CS88-145)

Closed file reopened

A man complained that the ministry had acted unfairly in closing his file in January 1987. The man suffered from agoraphobia and was unable to attend the district office for several months. The man argued that the ministry knew of his condition and ought not to have closed the file without attempting to contact him first. After we contacted the district supervisor, she wrote to the complainant, recognizing the distress caused by the closure of the file and subsequent suspension of benefits. She also told the man that his file had now been highlighted so that he would be notified before any such action is taken in the future. The man is now receiving GAIN for Handicapped benefits, having recently been so designated by the ministry.(CS88-146)

Gospel came with accommodation

A man complained to the Ombudsman when the ministry denied him regular income assistance and offered him hardship assistance instead in the form of hostel accommodation at a the "gospel mission". He told us that this hostel required residents to listen to religious sermons prior to every meal. He found this to be unacceptable and chose to live on the street instead.

Following dicussions with our staff, the ministry agreed to review the referral to the gospel mission. As a result of this review, the mission posted a sign clearly explaining the "devotionals and Bible readings" were optional. The mission also applied for funding to build a waiting area for those not wishing to take part in religious services.(CS88-147)

Move to school assisted

A woman was on assistance and had applied for a student loan to take a business course at a college. In order to take the course she would have to move but, because she was on a waiting list, she had made no immediate plans to relocate. Then, two weeks before the course started, she was notified that a space was available. She had not yet received her student loan and had not saved the money for tuition or for the move. The ministry's initial response was that two weeks was not enough notice to arrange for the financing. The woman contacted the Ombudsman's office. After we contacted ministry staff and the woman contacted the area manager, the ministry agreed to pay for the move and to continue providing assistance until the loan money arrived. The woman borrowed money to pay the tuition and began her training two weeks later.(CS88-148)

Aspiring realtor concerned for benefits

A man working nights at a gas station and collecting some assistance had recently taken and passed his realtor's course. He telephoned our office because he was afraid to pick up his licence. He had been told by the ministry that once he had his licence in hand, he would be considered self-employed and not eligible for further benefits. In other words, he had to choose between his part-time job plus assistance and the possibility of being a successful realtor. He had been warned, however, that he could spend up to 12 months before he made his first sale. After discussions with his social worker, the ministry agreed to a three-month trial period where he would continue to receive assistance while attempting to sell real estate. At the end of three months, he would have to decide to let his license expire or give up the assistance benefits. He made a sale in his third month making enough money to give up the ministry's assistance and begin a full-time career as a realtor.(CS88-149)

Phone deposit provided

It is difficult to find most work without a telephone; finding 'on-call' work without a phone is almost impossible. A woman with several years of health care experience called our office after B.C. Telephone Company required her to pay a $100 deposit in order to get a phone because she had been deemed a bad risk. Though this woman did not owe them money, she was on assistance. She did not have an extra $100 but had a good possibility of a job in the health care field. The problem was that she needed a telephone before she would even be considered for the 'on-call' work. We contacted B.C. Tel. The manager explained that after six months of debt-free service, the $100 would be credited to the telephone service account. We then called the supervisor of the ministry office who agreed that if the woman tried all other possible options, the ministry would give her the $100.(CS88-150)

Bill for funeral a surprise

A man on assistance somewhat estranged from his family had died in B.C. His family was in Alberta. They were notified and his body was sent to Alberta for the funeral. An Ombudsman officer from Alberta called our office because the family had incorrectly assumed the Alberta government would pay for the funeral. They now had a $2,600 bill that they could not pay.

We talked to the manager in B.C. responsible for the area of the province where this man had lived. He agreed to pay those expenses that the ministry would have paid had the funeral been held in B.C. His staff contacted the family and funeral home directly in Alberta. The family was relieved.(CS88-151)

INCOME ASSISTANCE FOR MINORS

The *GAIN Act* authorizes payment of income assistance benefits to eligible persons. GAIN regulations authorize discretionary payments of income asistance to older adolescents but "only after reasonable efforts have been made to have the parent or guardian assume full responsibility for the support of the child."

During 1988, this office received an increasing number of calls from young people aged 16 to 18 years who feel they have been unfairly refused income assistance. The majority of complaints we investigate are resolved to the satisfaction of the complainant. However, we are concerned with apparent inconsistencies in the application of the policy.

The ministry reviews individually each minor applying for income assistance. A social work assessment is required in order to consider family dynamics and parental responsibility. Where protection concerns exist, it may be more appropriate for the ministry to assist an older youth to get established in an independent living situation than to offer a foster home. Alternate options may be considered, such as placing the child in the home of a relative or a restricted foster home, or providing family support services. Income assistance is but one of a range of potential resources which might best fit a young person's needs. In a growing number of cases, the young person complaining to our office is either pregnant or the parent of an infant child.

Child development literature tells us about the struggle of adolescents in making the transition from childhood to adulthood. Professionals attest to the need for specialized approaches and resources for special needs adolescents. The flexibility of ministry policy in responding to the needs of older youths is commendable and realistic. However, in order that the application and assessment process is fair and equitable, clearer guidelines appear to be required to address the following issues:

☐ The application process often appears unclear with respect to the roles of Family and Children's Services and Income Assistance divisions.

☐ Applicants do not appear to be referred for social worker assessment in all cases. There are instances where income assistance is refused by a Financial Assistance Worker (FAW) or even a receptionist without the required referral for a social worker assessment. Seventeen or 18-year-old applicants have, in the past, been told they are not eligible for income assistance and have not been given the opportunity to complete an application form.

☐ Some ministry offices have operated on the understanding that under-age applicants did not have the right to appeal if refused income assistance. The ministry's official position is that under-age applicants have the same right of appeal as adults.

☐ Guidelines for what constitutes a social work assessment appear to be interpreted differently by field offices. We found cases where no contact is made with parents. Often parents are contacted only briefly by telephone. In some cases, a thorough family assessment occurs, including a social worker meeting with the whole family in face-to-face sessions.

☐ Minors living in common-law relationships are not eligible for income assistance according to current ministry policy. If an 18-year old mother of an infant child is living with the 19-year old father, only the father and the infant can be covered if the parents are not married. Exceptions in practice do occur, however.

☐ Follow-up support to minors established in independent living situations may not receive priority. Follow-up support by a social worker or child care worker may be vital to ensure an effective transition to adult independent functioning. This becomes doubly important when the minor is also the parent of an infant.

☐ Residential resources for older adolescents who may not yet be ready for independent living are frequently cited by ministry staff to be scarce, especially in some areas of the province. Traditional foster homes are often not suitable for older children who are preparing for adulthood and independence.

☐ The extensive planning required of social workers in contracting with wards of the ministry who are placed on independent living status is not required when the young people are not wards but placed on income assistance.

A systems study by the Ombudsman's office of this important area of ministry activity will continue into 1989.

Coordinated approach solves problems

A woman called us to complain that the ministry had refused a 17-year-old youth financial assistance so that he could continue to stay with her family. He had left home and was doing well with her family but, because the caller was on income assistance, she could no longer afford to help him without financial aid.

Ministry staff said they had contacted the boy's parents and they had said that he could return home. No abuse was evident. When we spoke to the youth, he said he did not understand the ministry's decision because a psychologist and his probation officer counselled him to leave home in his own best interests. We spoke to the psychologist and the probation officer who confirmed this assessment. Both felt that the boy should be assisted to establish himself independent from his family.

We called back the ministry's district supervisor with this information and suggested that the ministry develop a plan for this boy that was coordinated with the other involved ministries, Health and Corrections. They agreed to do this.

Following consultations between personnel from the three ministries, the youth was placed on income assistance and referred to the Job Trac Program to assist him in job preparation training.(CS88-152)

Ministry urged to take second look

A 17-year-old girl who had recently placed her baby for adoption called our office. She said that she had been physically abused by her mother and kicked out of home. She was staying with her boyfriend's parents and wanted financial support but the ministry had refused her application for income assistance. Her boyfriend was not living in the home.

When contacted, the ministry's district supervisor said the 17-year-old's mother was getting income assistance for her daughter and it was felt that she should return home. When we told the ministry that the girl had claimed her mother had kicked her out and had abused her, the ministry agreed to take a second look.

Based on a further assessment, the ministry agreed to provide the youth with income assistance and agreed that her current living situation appeared to be suitable. The complainant asked us to speak to her new "foster mother" who informed us that she was pleased with the resolution. She felt that this girl deserved all the help she could get because she had apparently been severely sexually and physically abused at home since she was six years old.(CS88-153)

No assistance but a bus ticket home

A 17-year-old youth ran away from his parents' home in another province to stay with a friend's family in B.C. He applied for income assistance so that he could 'pay his way' in this household. He said that even though his mother had written the ministry stating that he could not go home, he had been refused assistance.

In lengthy conversations with an Ombudsman officer, the youth acknowledged that he was missing his family. He was nervous about telling his friend's parents this because they had been so good to him and he did not want them to think that he was upset with them. With our encouragement, the youth decided to speak to his friend's parents. We spoke to the ministry social worker who indicated that she would be prepared to assist the youth if he wanted to return home.

The youth called us back saying that he had made his decision to return home. The social worker contacted his parents who were pleased that he was returning. The ministry arranged for a bus ticket and food money for the long trip home.(CS88-154)

Thorough assessment needed

A 17-year-old youth's mother had left town and moved into an apartment which could not accommodate him. He had been living with a friend for three days but his friend told him he could not continue to stay there indefinitely unless he could pay for his expenses. The youth contacted the ministry about receiving financial assistance since he had no money for food or a place to live, but he was denied assistance.

We contacted the appropriate district supervisor and were informed that the mother said that her son could come and live with her if he wanted to. We explained this to the young man. He claimed that, although his mother told the ministry that he could come there to live, it was clear that his mother did not want him and that this living arrangement would not work out. Still, the only assistance the ministry would provide was transportation to his mother's new location.

Later, we attempted to contact the young man to determine whether or not he had moved back to live with his mother. We learned that he had been charged with an offence for stealing food from a restaurant. While waiting for his court appearance on the charge, the young man was placed in a private home paid for by the Corrections Branch. His probation officer proposed that the Ministry of Social Services and Housing provide room and board for him and that he take part in a work attendance program. The ministry reviewed its earlier decision and payment for room and board was approved. The ministry is now paying for room and board, supplemented by payment from the complainant and his mother.

This case reinforces the importance of a thorough social work assessment. In our investigation, we found that the young man had had a very difficult home life and that, although the boy's mother offered to let him stay there, this may not have been realistic under the circumstances. We believe that changes implemented by the ministry since this incident, requiring a social work assessment, may serve to prevent a reoccurence of this type of problem.(CS88-156)

Assistance to pregnant minors

An 18-year-old girl was denied income assistance. She had been living with her boyfriend and had become pregnant. She said that she contacted the ministry to request financial help during her pregnancy but was informed that she was not eligible for assistance as she was living in a common-law arrangement. Since she felt that she could not continue her pregnancy without financial support, she had an abortion. Later, she was approved for income assistance, and contacted our office to complain about not receiving the assistance before her abortion.

According to information provided by the ministry, the young woman was denied assistance because she was living common-law. She was apparently offered assistance if she would move to her own place and was referred for counselling before she had the abortion.

Although we were unable to resolve the complainant's concern since the abortion has already taken place, we continue to have concerns about the ministry's policy regarding income assistance for pregnant girls who are living common-law. There have been complaints about the ministry providing financial assistance for someone over 19 with an infant living common-law while denying assistance because a mother is under 19.

We believe that every application by someone under the age of 19 should be thoroughly assessed by a social worker. In September 1988, the ministry updated its procedures for handling applications for income assistance from unmarried persons under the age of 19. However, the policy continues to include a section which prevents children living in common-law relationships from receiving income assistance. We are currently reviewing this policy with Ministry of Social Services and Housing.(CS88-157)

CIHR benefits reinstated

If a child cannot live in his/her own home but can reside with a relative, the ministry has the authority to provide financial assistance in the form of 'child in the home of a relative' (CIHR) payments. We received a call from a woman who was receiving CIHR payments for a relative who was living with her. The child's father did not want his son at home and did not provide financial support. The woman called us complaining that the ministry had stopped the CIHR payments because the youth was not attending school regularly. We contacted the district supervisor who immediately initiated a review of the circumstances. Although they felt that things were not working as originally planned, CIHR was the best option. The benefits were reinstated.(CS88-158)

Youth preferred living with neighbour

A woman contacted the Ombudsman's office after the ministry refused to provide financial assistance for the care of a 14-year old youth she had taken into her home. She told us that the ministry refused to apprehend the child or ensure his safety even though his father abused him and threw him out of the house.

When we enquired, ministry staff told us the child could return to his home where family counselling would be provided to resolve family tensions which resulted, in part, from the death of the youth's mother a year or so before.

The youth told us he had not been physically abused but he did not want to remain in the home because of tensions between him and his father and because his father's new wife would be moving in and bringing younger children. He preferred to live with a neighbour.

Once we confirmed that there were no protection concerns and that family counselling was being provided we found the complaint to be unsubstantiated. The ministry is not responsible for maintaining a child outside the family home unless there are protection concerns or it is otherwise in the child's best interest to leave.(CS88-159)

17-year-old mother assisted

A young woman, 17 years of age with a five-month-old baby, applied for financial assistance from the ministry for herself and her child but she was denied. She had moved from her home community to a location some distance away to attend school. She felt she could not continue to live at home but wanted to maintain contact with her parents while establishing an independent household. When denied assistance by the ministry, she contacted the Ombudsman for help.

When we contacted the district supervisor where the young woman now lived, he told us he did not support the woman's move but would refer the matter to the district supervisor where the woman previously resided with her parents. We asked the social worker there for her assessment of the home situation. She took another look at it and told us that she would not recommend income assistance. We pursued the matter further with the area manager and he agreed that the situation required further assessment by the ministry. Discussion between the area manager and district supervisor resulted in income assistance being provided on a one-month trial basis, during which the young woman's ability to provide a home on her own for her baby would be evaluated.

Several young women in similar situations have repeatedly stressed the difficulty they experienced in trying to raise a child in their parents' home. The grandparents want to continue to parent their daughter but also take on the role of parent of her child, making it very difficult for the new mother and child to develop a life of their own. In considering income assistance the ministry must consider the best interests of both the infant and the young parent and work with the grandparents to provide support that will lead to independence.(CS88-160)

UI delays bring hardship, assistance

We received a call from a young man who stated that the ministry would not provide hardship assistance while he waited for his unemployment insurance benefits to come through. He stated that he has received some help from the ministry approximately three months earlier but due to the lengthy delay in receiving his unemployment benefits, he had no money left for food or rent.

After we contacted the ministry, the matter was reviewed and a hardship grant approved for a two-week supply of food. The complainant made alternate living arrangements on his own.

We contacted a senior ministry official about the problems associated with lengthy delays in receiving unemployment insurance benefits which may place the person who is under the age of 19 at risk. As we do not have the authority to investigate federal government offices, and therefore can do nothing about the delays, we suggested that the ministry look into the possibility of establishing a protocol with the appropriate federal ministry for persons under 19. A young person living on his own should not be placed at risk by gaps between systems.(CS88-161)

Solving home problems needs work

We received a call from a lawyer representing a 16-year-old youth who felt that we should look into the ministry's role in providing for the youth's financial needs. When we contacted the young man, he told us he had nowhere to live. His parents told him he could not live at home, but the ministry was insisting that he return home.

We contacted his mother in an effort to have them agree to work toward a resolution of conflict within the family. We spoke to the social worker who agreed to act as a mediator between the youth and his mother. On the basis of the social worker's intervention, the youth returned home with the understanding that he would avoid confrontation in the family and look for work.

This young man was reluctant to work with the ministry in resolving the issues of conflict at home. The chance to air his concerns and to hear the pros and cons of alternative living arrangements from what he regarded as an impartial third party led him to the conclusion that he did have a part in the problems occurring in the home. The resolution, however, rested with the social worker who had the skills and took the time to work through the issues with the youth and his mother. (CS88-162)

TREATMENT PROGRAMS

Girl spurned religion at group home

The mother of a 16-year-old girl called us with a concern about her daughter. She had recently given her consent to making her daughter a permanent ward of the ministry. She said that her daughter was currently AWOL from her group home and was refusing to return.

We asked the mother to have her daughter contact us so that we could discuss the concerns. When we spoke to the girl, she said that she was upset with the group home parents because they were forcing their religious views on her. She acknowledged that the group home parents were caring and helpful but she resented the expectation that she adhere to their religious beliefs.

When we spoke to the ministry's social worker, he agreed to set up a meeting with the girl and the group home parents to discuss the girl's concerns. We encouraged the girl to contact her social worker. She did so and at the arranged meeting, the group home parents agreed not to discuss their religious beliefs with the girl. She voluntarily returned to the group home.(CS88-163)

Inter-ministry meeting the key

A 17-year-old called our office from the psychiatric unit of a general hospital. She said she had been told by her psychiatrist that she was ready to leave the hospital but that no suitable placement in the community had been found by the Ministry of Social Services and Housing. She was 'in care' with the ministry by agreement, her family was not seen as a resource and the ministry was offering a placement near where her father lived in a suburban community. This facility was an adult tra
tion home where the girl had previously resided.
had previously attempted suicide in that facility and
us that she did not want to return there. She requeste
placement closer to the city hospital so that she co
be near to her mental health social worker and a yo
program she had recently joined.

Our contacts with the Ministry of Social Services
Housing indicated that a resource search was be
conducted across three regions and nothing suita
had been found yet. Concerns were raised by mini
officials about the mental state of the girl and her ap
ent propensity for suicide. The ministry was concer
that their resources may not be well-equipped to
spond to the seriousness of her problems and ra
questions about the appropriateness of the discha
The girl's psychiatrist stated that she was ready for
charge, had made progress in treatment, was motiv
to change and was not certifiable under provision
the *Mental Health Act*. The girl had been a victim of
physical and sexual abuse and, according to me
health and hospital professionals, needed a stable
cure living environment.

A recent emergency meeting of the regional I
Ministry Children's Committee (IMCC) had rec
mended placement in a Vancouver child care reso
which specialized in treatment of abused adolesc
The demands on this resource were great with pri
given to youth living within the region that this reso
served. Inter-regional discussions had not been
cessful in implementing the IMCC recommendati
dearth of community-based, treatment-oriente
sources for this type of youth was cited by num
officials from the various agencies with whom
consulted.

The number of professionals involved in this
added to the complexities of the planning process
child's psychiatrist, nursing staff from the hospital
a mental health social worker, child welfare social
er, resource unit personnel from three ministry re
plus supervisory and management personnel we
involved.

We suggested that a planning meeting would b
ful in order that the key people get together in sea
a resolution. A consultation with clinical staff supp
our position that it would be an empowering
ience to include the young complainant in this c
ence. Thirteen professionals attended the confe
along with the youth. She presented her concer
wishes to the meeting in an eloquent manner, q
overcoming her nervousness. Key points of con
were identified and the ministry area manager agr
follow up with inter-regional administrative discu
While no firm placement was agreed upon at the
the conference, the complainant expressed her

ciation for all the people who were obviously trying to help her. Hospital staff were impressed with the positive impact of this meeting on the youth. She had clearly felt empowered by her attendance and was hopeful of a speedy response to her wishes to leave the hospital.

A few days after this conference, a group home placement was found in Vancouver and an agreement was reached between the Ministry of Social Services and Housing regions to ensure placement of this youth into a day treatment program for victims of abuse. After her move, the complainant informed us that she was extremely happy with her placement and thanked all of those involved in efforts to help her.(CS88-164)

Youth's return home delayed

The father of a 16-year-old called the Ombudsman's office. He was extremely concerned that his son was due to be released from a correctional facility the following day and was to return home. However, his wife threatened to leave if that happened because of the severity of the family conflict.

When we contacted the ministry's district supervisor, she explained that the parent's had changed their mind frequently about whether or not the boy could return home. The district supervisor agreed to undertake an urgent resource search for an alternate placement.

A special care home was found for the boy and a mental health counsellor was involved to provide family counselling with the goal of eventually having the boy return home to live with his parents.(CS88-165)

Use of force at group home a concern

We received a call from a person under the age of 19 who had been placed in a program funded through a ministry contract. The young person said she was physically abused through the excessive use of force while she was a resident in the resource. She said this was one of the reasons that she left and was AWOL from the program.

This young woman said she was originally brought before the court on a minor offence but complained that ministry staff had recommended she be placed in the contracted resource in an isolated community for a lengthy period of time. She was now concerned that she might end up in the Willingdon Youth Detention Centre because she had breached her probation order by leaving the program.

We contacted the ministry's district supervisor who was responsible for liaison with the resource. He immediately initiated an investigation into the allegations of exessive force and met with resource staff to establish guidelines around the use of force.

We advised the young woman to contact a lawyer about the breach of probation. She had located employment and a place to live in her home community. This and other supporting information convinced the court to amend the probation order deleting the provision to attend the program.(CS88-166)

Elusive help finally found

A woman called our office frustrated and disappointed by a change in a ministry decision. She has a handicapped 17-year-old son for whom she has cared all his life. He had been assessed five different times and placed in five different programs. After four years of trying, he had finally been accepted by a very good resource that was capable of teaching him some independent living skills. She had taken her son for an initial visit and all had gone well. However, the ministry had failed to sign the appropriate papers and he missed a chance to enter the facility. The woman called the ministry office to enquire and was told the office was no longer in existence. She called another ministry office and was told that a new specialized unit would be dealing with her son. He would not be placed in the proposed facility because it was outside of the region. Instead, a worker would be assigned to work with him and some other program would be arranged.

We called two ministry offices and discovered that, through a major reorganization, one office had been closed and the son's file had gone to another office. At the same time, a specialized unit was being established to work with handicapped individuals. The case of this woman's son had become lost in the transition.

We discussed this with the district supervisor and, after consulting with the area manager, he agreed to go ahead with the original decision to place this boy in the desired facility.(CS88-167)

MISCELLANEOUS

Bad back, not gender, the problem

A woman complained to the Ombudsman when her rehabilitation officer refused to refer her to a construction job because he felt the job was not suitable for women. The woman felt this was unfair, especially since her work history was largely confined to the construction industry.

At our suggestion, the district supervisor and the woman met to discuss her concerns. The supervisor explained that the decision not to refer her to construction work was related to medical concerns about her bad back, not due to sexism. The woman was satisfied with this explanation, especially since the supervisor was also a woman and unlikely to support a sexist decision.(CS88-168)

Behaviour problems not ministry's

Occasionally, we receive calls from parents who are looking to the Ministry of Social Services and Housing for help in controlling their child's behaviour. While we recognize their frustration, we must inform them that government ministries are limited in their authority to physically control or confine children. This is to safeguard against excessive state intervention.

One woman's 16-year-old daughter was residing with a friend but she wanted the girl to come home to live. The ministry had offered services but neither the child nor the friend would cooperate with the parent's wishes. She contacted the Ombudsman requesting information about the ministry's role in assisting her to have her daughter home to live.

We had to tell this woman that the ministry cannot force a child to cooperate. Forced intervention could only take place if her daughter was breaking the law and was subject to arrest, was placing herself in immediate physical danger, or was commitable under the *Mental Health Act*. We discussed the possibility of family counselling and strategies for providing a way for the daughter to become re-involved with her family.(CS88-169)

Document's trail leads to Saskatchewan

We received a call from a counsellor with the Senior Citizens Counsellor Program of the Ministry of Social Services and Housing who was acting on behalf of another senior citizen. He called our office requesting assistance in securing proof of age for a senior citizen who was suffering from Alzeimer's disease. Without his proof of age, the person could receive no pension benefits.

Apparently his records were destroyed in a care facility fire and he was only able to provide sketchy information about his past such as the province where he had been born, Saskatchewan.

We were able to locate a sister who lived in another nursing home. The sister was able to provide names and locations of other family members and background information about the family. We also contacted the Public Archives of Canada as the man had apparently served in the Canadian Armed Forces.

We wrote to the Saskatchewan Ombudsman's office, providing our historical information and asking that Saskatchewan's Vital Statistics Division be requested to prepare an extract for the man as proof of age.

A counsellor assisted the man in filling out the required application form. Given the man's circumstances, Saskatchewan Vital Statistics agreed to waive the application fee. The man subsequently received the required documentation.(CS88-170)

Ministry of Solicitor General

A division of the responsibilities held formerly by the Ministry of Attorney General resulted in the creation of this new ministry in 1988. Well-established working arrangements between our office and the various branches that form the new ministry remain in effect including the Motor Vehicles Branch, the Corrections Branch, the Coroner's Office, Sheriff's Office, the B.C. Parole Board, the B.C. Police Commission and local police forces.

Resolved	424
Not resolved	0
Abandoned, withdrawn, nonjur:	111
Not substantiated	411
Declined, discontinued	394
Inquiries	39
Total number of cases closed	1,379
Number of cases open December 31/88	204

Good reasons for proof of identity

A teenager applying for a learner's permit was told she first had to present her original birth certificate or a certified copy. The original was in the United States and the girl's mother was told by the U.S. consulate that it might take some months or even years to get it. The teenager complained that the Motor Vehicle Branch acted unreasonably in refusing to accept the photocopy she possessed.

The department explained to us that they will accept other convincing proofs of identity such as passports or citizenship papers and that they expect licence applicants to exhaust all reasonable avenues to obtain the necessary documents. However, if such efforts are unsuccessful, or if the applicant demonstrates an urgent need for a licence, to obtain a job, for example, the department will accept a statutory declaration from a natural parent or guardian regarding the child's identity.

Given the rationale for the policy, that a driver's licence is often used to identify the parties in financial or legal transactions, and the flexibility built into it, we found the department's position to be reasonable. The Vital Statistics Division of the Ministry of Health provided us with the address of the Vital Records Office in Washington, which we forwarded to the complainant. The office manager of the local motor vehicles office said that if the complainant had not received her birth certificate in two months, he would consider accepting a statutory declaration.(CS88-171)

Fax helps expedite licence

The owner of a security business called the Ombudsman's office on the 29th of the month because his business licence expired on the 31st and he had not yet received his licence renewal application. He claimed to have made more than one telephone request, but a review of the ministry's file showed no record of them.

The business was in good standing, eligible for renewal, and there was no reason not to process the request. To facilitate a renewal within the two-day deadline, we arranged to use government facsimile machines. The office closest and most convenient to the complainant's residence was a parole board office, and all necessary documentation was transmitted through that office. The licence was issued in time.(CS88-172)

Hearing inquest results on radio hurt

A woman complained that she had learned the results of a coroner's inquest into her married son's death from a radio broadcast. She felt that she ought to have been told personally, in advance, not through the news media.

We reviewed her complaint with the Chief Coroner and found that, upon admission to the hospital, the deceased had recorded his wife as next-of-kin. After the man died, the coroner's staff maintained contact with the widow. Since she was kept advised of the coroner's findings, the impact of the inquest's findings was considerably less than it might have been.

Unfortunately, the deceased and his wife were in the process of dissolving their marriage and there was bad feeling between the widow and her mother-in-law. This caused a breakdown in communication within the family.

Inquests generate public interest and news media coverage which may be immediately broadcast. Under the circumstances, no fault could be found with the coroner or his staff. However, after our enquiry the Chief Coroner personally wrote to the complainant expressing his regret.(CS88-173)

Youth wanted his testimony heard

A young man who was subpoenaed as a witness at a coroner's inquest but not required to testify felt that unless the type of evidence he could give was heard by the court, the jury could not reach an appropriate verdict. He was also concerned that the jury's recommendations be followed up to ensure that they were implemented by the person or organization to whom they were directed.

The purpose of an inquest under the *Coroner's Act* is to "inquire into and determine who the deceased was and how, when, where and by what means he died". The act stipulates that an inquest jury cannot make findings that carry "legal responsibility" or "express any conclusion of law." However, it can "make recommendations in respect of any matter arising out of the inquest."

Our investigation discovered that the complainant was not called to testify for three reasons: his evidence would duplicate that of another witness (seven other subpoenaed witnesses were likewise not called); his opinion about circumstances preceding the mishap were personal and opinion only; and direct evidence about the same circumstances was already adduced from another witness.

Legal counsel for the inquest elicited evidence from witnesses that addressed the complainant's concerns and proved that the public interest is well-served by the The coroner's summation and the jury's findings and recommendations took full account of available evidence. Both stressed the chief coroner's policy to maintain contact with those at whom a jury's recommendation is directed and to monitor the implementation of the recommendations. While our investigation found the coroner's inquest system was well-administered, the public-spirited nature of this young complainant was most welcome.(CS88-174)

Heat of the moment altered view

We received a call from a man who had his business property seized by deputy sheriffs acting under a court order. Seizures of this kind are often disputed and the situation can become emotional.

The complainant in this case believed that the deputy sheriff in charge had acted in an arrogant and belligerent manner during the seizure. We interviewed many of the people present at the seizure and all agreed that the seizure had been disputed, but that the deputy sheriff's manner had not been inappropriate.

On reflection, the complainant agreed that the deputy sheriff's demeanour had been firm and authoritative, rather than arrogant and belligerent. The man was satisfied that our office had thoroughly investigated his complaint.(CS88-1 [illegible]

School bus seized in dispute with WCB

An Indian band was involved in an ongoing monetary dispute with the Workers' Compensation Board. A Writ of Execution was issued and the Sheriff's office proceeded to seize the Band's school bus.

We received an urgent phone call from the band to say that it was going to be very difficult for many parents to get their children to school. Since the band's lawyer was travelling to Vancouver for a vacation, it appeared that the school bus could be tied up in a lengthy legal dispute.

We immediately contacted the sheriff's office. They were acting with a valid warrant and stated that the bus could not be released without the creditor's approval or payment of the full amount owed.

The band did not have the money available, so we looked to the creditor for relief. Our Vancouver office contacted WCB staff and they authorized the sheriff to release the school bus before the next school day although it was still subject to seizure pending legal clarification of the band's indebtedness.(CS88-176)

Moving bill questioned, researched, refunded

After an execution of property occurred, a moving company was hired to pack and move a woman's goods. The mover's bill was submitted to the sheriff's office, then passed along to the debtor.

She felt that she had been overcharged, so she and several of her friends made phone calls to the moving company to enquire about costs. The costs that they were quoted for similar moves were significantly less than those charged by the company for the work done for the sheriff's office.

We contacted the sheriff's office and discussed the quotes the complainant received and the actual amount charged. They agreed that the moving company had overcharged, a refund was obtained for the complainant and the sheriff's office agreed in future to monitor bills for contracted services.(CS88-177)

Cadillac caught in Catch-22

A man purchased a 1947 Cadillac for which he wished to obtain vintage licence plates. After registering it at the Surrey Motor Vehicle Branch office, he discovered that he couldn't buy the vintage plates there but must travel to Burnaby for them. He purchased regular insurance and licence plates from his Autoplan agent, then drove his car to Burnaby only to discover that he was not eligible for a second set of plates.

We contacted the Motor Vehicle Branch office which was able to resolve the motorist's dilemma quickly. The complainant was advised to transfer his existing insurance and plates to another motor vehicle, thereby enabling the office to issue the vintage plates for the Cadillac.(CS88-178)

Hats off for driver's photo

A man had the habit of wearing a hat while away from home. He wanted to have his driver's licence photograph taken while wearing his hat, but a staff member of the Motor Vehicle Branch explained to him that unless he was required to cover his head for religious purposes, policy required him to remove his hat. He refused to do so and received a refund of the money he had paid for a new driver's licence.

The complainant believed that he was being discriminated against since some people were allowed to have their heads covered for driver's licence photos. The Driver's Licence Division explained to us that their policy on driver's licence photographs is aimed at getting the best possible photograph of every driver for law enforcement and other identification purposes. When people are required by their religious beliefs to wear head coverings, such a head covering forms a typical part of their daily appearance and may assist in their identification.

Our position was that the Canadian Charter of Rights and Freedoms protects a person's right to practice his or her religious beliefs freely and that the ministry's policy is reasonable in making a distinction for those purposes. No discrimination was found. (CS88-179)

ID in French acceptable

After a woman moved from Quebec to B.C., she went to a Motor Vehicle Branch office to obtain a British Columbia Identification Card, a laminated card with the photograph, legal name, and the birth date of the holder. This card serves as a primary identification document for non-drivers. On producing her original birth certificate, typed in French, as proof of her identity, she was told that the document was unacceptable and that the office had a right not to serve applicants who produced documents in languages other than English.

The treatment she received was contrary to Motor Vehicle Branch policy. This stipulates that staff who are unable to read French identification documents are to call head office for an interpretation if the nature of the document and name and birth date of the person it describes are not readily apparent.

Following our intervention, the complainant returned to the office and received her ID card without difficulty. Identification papers in other languages may prove more problematic to Motor Vehicle Branch staff. Applicants who provide documents in languages such as Arabic or Norwegian may be asked to produce a translated copy, which can be provided by a local consulate or schools of languages.(CS88-180)

Vehicle owner's identity revealed to some

Numerous drivers complained to us about the Motor Vehicle Branch's practice of giving out the names and addresses of vehicle owners to parking lot operators. They thought it a dangerous invasion of privacy.

One complainant expressed the concern that the department was providing the information to anyone who asks for it. "What if some guy sees me in my car and wants to meet me?" she said. "Will I have him showing up at my door just because the government has told him where I live?"

There was a time when the Motor Vehicle Branch did indeed provide such facts to anyone but an earlier Ombudsman's investigation led to recommendations for a restriction of the practice. These were implemented. There are situations where it is appropriate for a vehicle owner's identity to be released. A bank may require it to put on a lien as part of a loan agreement. Police may need it to prosecute an offence under the *Motor Vehicle Act*. The owner of a gas bar needs it to collect from the occasional driver who either forgets or wilfully neglects to pay for gas. And parking lot operators, if they were unable to obtain such information, would have no way of collecting from drivers who fail to pay their tickets. In these cases, a citizen's reasonable expectation of privacy is balanced against the public interest. Onlv in cases that relate to transactions involving the ownership or operation of a vehicle is information about drivers released. Organizations are given search accounts by the branch if they provide proof the information is for a proper purpose. An individual or organization that does not have a search account must provide documentation that shows the need for such information. Further, those with search accounts are periodically audited to ensure that abuse of their privilege has not taken place.

Although there is no comprehensive statute in B.C. protecting the privacy of individuals with regard to the use of government information, the present Motor Vehicle Branch policy conforms with the principles of the federal *Privacy Act*, under which personal information in the control of a government institution may be disclosed only "for the purpose for which the information was obtained or for a use consistent with that purpose".(CS88-181)

No exception to ATVs on public roads

A rural resident who was confined to a wheelchair had one major enjoyment that allowed him to experience a sense of independence: driving his hand-control operated, all-terrain vehicle (ATV) in the bush near his house. To get to the woods, however, he had to drive a short distance along a road in his housing development and then cross a highway. It is illegal to drive an ATV on a public road, and the RCMP had already stopped him twice and threatened to confiscate his vehicle if they caught him on the road again.

The man had no towing vehicle and no driver's licence. Apart from using his ATV, he had no wish to drive. However, he had owned the ATV for a number of years and felt quite competent in its use. He asked if we could help; he was feeling frustrated and housebound and knew no one who could tow his vehicle to the woods where he could use it.

In rare instances, the Supterintendent of Motor Vehicles will use his discretion to grant an exception to the ban against the driving of ATV's on public roads. In this case, however, Motor Vehicle Branch staff had observed the complainant driving his vehicle and considered his actions too uncoordinated to ensure its safe operation.

In an attempt to find an alternative that would enable the complainant to achieve his goal, we contacted a variety of community agencies and located one in the complainant's area which offered to find volunteers willing to tow his ATV back and forth to the woods where he wanted to drive it.(CS88-182)

Driver duped by impersonator

Occasionally, drivers who attempt to renew their licences are surprised to find that they have points on their records and owe sizeable amounts of money to ICBC and the courts as a result of traffic infraction which they never committed. This happens when a driver is stopped by the police, fails to produce a driver's licence and conveniently comes up with the correct name, address and date of birth for a relative or friend. That relative or friend is deemed convicted when he or she fails to dispute a charge about which he is totally unaware. By the time the driver learns of the deemed conviction, a year or two have gone by and the officer who issued the ticket would be unable to recollect the incident. And no new licence is issued until a court-imposed fine or a penalty premium imposed by ICBC are paid.

A driver came to us with just such a complaint, saying that she had been told by the police to forget trying to prove that she was innocent of a charge that had occurred a year before. She thought that if she could simply get hold of a copy of the original ticket, she could prove that her signature did not match the one on the ticket. Unfortunately, traffic information tickets are unsigned.

All we were able to do was to refer her back to the police to set up an appointment with the issuing officer in case he could remember the appearance of the person to whom he had issued the ticket. She was fairly certain that her sister had been the offender and we suggested that she consider providing this information to the police so that they could investigate. Although we were unable to provide any substantial assistance to this complainant, the situation for others in her position has now been made somewhat more hopeful by the implementation of a court policy whereby a notice of conviction is automatically sent out to an offender within a few weeks of a ticket being issued. Drivers who believe they have been impersonated thus have a much better chance of disclaiming their involvement and having the conviction revoked.

The most extreme solution is that which has been adopted by Ontario, where a driver who fails to produce a licence on the request of a police officer is required to leave the vehicle by the roadside and continue his journey on foot. While this would undoubtedly prove an effective deterrent to those who would impersonate a relative or friend, it would be hard on those who suffer from ordinary absentmindedness and leave their wallets at home.(CS88-183)

Undoing consequences of impersonation

If, having received from the courts a notice of a traffic conviction, you manage to convince the police officer who had issued the ticket that the driver to whom he had given the ticket was not you but somebody impersonating you, as was alleged by the complainant mentioned in the previous summary, you have only just begun to resolve your problem.

A mother called us after her son had received notices from the court regarding fines owing by him as the result of four separate traffic convictions. She said that another man had already been convicted of impersonating her son in all four instances following an investigation by the RCMP. On receiving the court notices, her son had gone back to the RCMP to have the matter resolved and had entered a revolving bureaucratic door from which there appeared to be no exit: the police said it was out of their hands and referred him to the Motor Vehicle Branch, which said that it was a matter for the courts and referred him to the Court Registry which referred him back to the RCMP detachment to which he had gone in the first place. To complicate matters further, the four offences which had given rise to the convictions had taken place in three different Court Registry areas around the province.

After talking to Court Services officials about the problem, we were able to advise the complainant of the necessary procedure for her son to follow in order to have the convictions removed from the system. First, he would have to go to one of the Court Registries involved and swear an affidavit to the effect that the infractions for which the tickets were issued had not been incurred by him and that another individual had been convicted of impersonating him. He would then be required to appear before a Justice of the Peace to have the conviction set aside. We also suggested that when he went to the Court Registry, he should apply to have his appeals of the convictions in the other registries waived to the same registry.

In view of the difficulty that had been faced by the complainant in attempting to obtain information about how to get the convictions set aside, as well as the cumbersome and time-consuming process facing drivers who seek to undo the consequences placed upon them by impersonations, we suggested to the Court Services Branch that an effort be made not only to communicate the details of the process to officials who might be approached by victims of impersonation but also to look at the possibility of developing a less complicated procedure. Court Services acted promptly in proposing to both the Police Services Branch and the Motor Vehicle Branch an expedited procedure by which any person who had obtained a written statement from a police officer indicating that the charged individual was not the individual against whom a traffic information ticket had been issued would be directed to the appropriate Court Registry. The registry would then notify the Motor Vehicle Branch so that the person's driving record could be cleared and would also arrange for an appearance before a Justice of the Peace to set aside the conviction.

In addition, the branch proposed an amendment to the *Offence Act* to streamline the process further so that impersonated drivers would need only to deal with the police without having to go through the further step of appearing in court. Finally, the branch recommended that consideration be given to the implementation of a process to ensure that immediate action is taken when drivers who fail to produce a licence do not promptly take it to the police to prove their identity. Arrangements were made for the continued involvement of our office in the implementation of the above improvements or variations of them.

Police experience suggests that in almost all cases where impersonation of a driver occurs, the impersonator is known to the victim as either a relative or a "friend" who knows the full name, address and date of birth of the person whose name is given. Consequently, the lesson to be derived appears to be: if you ever get a notice from a court registry saying that you owe a fine for a traffic offence that you did not commit, contact the issuing officer as quickly as possible to establish that you are not the perpetrator and look in your own back yard for the person it might have been.(CS88-184)

Incorrect information given twice

A woman called us in some dismay because her Saskatchewan driver's licence was due to expire the following day and she had just been told by a Motor Vehicle Branch official that in order to prove her identity to obtain a B.C. licence she would have to provide her birth certificate, which would entail writing to Saskatchewan and waiting several days or weeks.

Two weeks earlier, she had called the same office to find out what documents would be needed and was told that she could present a social insurance card as proof of identity. She needed her driver's licence for work and was afraid she might lose her job if she was unable to drive while she was waiting for the birth certificate to arrive from Saskatchewan.

We called the head office of the Motor Vehicle Branch in Victoria and were told that both statements made to her had been incorrect. Departmental policy provides that any Canadian's driver's licence is acceptable as primary proof of identity when accompanied by a second piece of identification such as a bank credit card.

We called the Motor Vehicle Branch office with which the complainant had been dealing to ensure that the correct policy would be followed when she returned with her Saskatchewan licence. She did so and was able to receive her B.C. licence on the same date that her Saskatchewan licence expired.(CS88-185)

Policy changed on passport use as ID

Driver's licences and British Columbia Identification Cards issued to non-drivers by the Motor Vehicle Branch are accepted as basic proof of identity in all manner of daily transactions between citizens and banks, stores, police officers, and so on. Consequently, the Motor Vehicle Branch is scrupulously careful to ensure that applicants for ID cards or licences produce satisfactory evidence regarding their identity to prevent fraud.

The parents of a young man who had applied for a learner's licence contacted us after he had presented his Canadian passport as proof of identity and been told that, as a dual citizen of Canada and the United States, he would have to present either his American passport or a birth certificate because the Canadian passport was not considered acceptable as primary proof of identity. He had no difficulty going home to obtain one of the other documents but his parents were upset about the fact that the Canadian passport was the only passport in the world not considered acceptable by a branch of government as proof of identity. If the Motor Vehicle Branch had such a policy, they wondered, did this mean that a Canadian passport had low credibility in the eyes of the rest of the world and that they would face difficulties using it when they went abroad?

Officials at the Motor Vehicle Branch explained to us that it was important to establish the legal name of an applicant and that Canadian passports were sometimes issued to people in names other than their legal names. The logic for accepting passports from other countries was based on the fact that it is often difficult for people who enter British Columbia from other parts of the world to obtain their birth certificates. We suggested that the same holds true for the significant percentage of Canadians who are immigrants.

Following our discussions, the branch reviewed its policy with regard to proof of identity and issued a policy directive to all its offices to indicate that henceforth

Canadian passports would be accepted as a primary proof of the identity for licence applicants.(CS88-186)

Rectified entry restored insurance

A woman who totally destroyed her truck to the extent of $18,000 damage was dumbfounded on being told by ICBC that, in the process of renewing her auto insurance each year, she had falsely informed the corporation that she held a B.C. driver's licence, in breach of the insurance agreement, and that because of it, she would have to cover the damage out of her own pocket.

ICBC was not convinced by the fact that she produced a laminated permanent B.C. driver's licence for its inspection. Its computer records showed that the licence had been cancelled by the Motor Vehicle Branch because she had applied for and received an Alberta licence. Confused about what to do, she looked up the phone number of the Motor Vehicle Branch for her rural area and noticed that underneath it was a toll free number for the Ombudsman. She had little idea what an Ombudsman was but she thought it was worth a try so she called us to explain her dilemma.

The woman said she had moved from Alberta three years earlier, had surrendered her Alberta licence on receiving her B.C. licence and, as far as she knew, it had been valid ever since. She was very anxious that something be done quickly, as she lived on a remote ranch and was without transportation as a result of the accident.

When we enquired, the Motor Vehicle Branch checked its records for us, contacted its Alberta counterpart and determined that incorrect information had been entered into its records. The fact that the woman had obtained her Alberta licence on the fourth day of the second month and her B.C. licence on the second day of the fourth month of the same year had apparently resulted in confusion leading to the notation that she had surrendered her B.C. licence and obtained an Alberta licence rather than the reverse.

The branch immediately corrected its records and ensured that the information was transmitted to ICBC, with the result that we were able to call the woman back the same day to tell her that the difficulty had been cleared up. (CS88-188)

A dizzy spell cost the farm

A dizzy spell experienced by a rancher while putting in some irrigation pipe led to a distressing chain of events.

The rancher's family doctor referred him to a heart specialist who conducted some preliminary tests. The rancher told him he had once had Meniere's syndrome, a disorder of the inner ear that affects the sense of balance, but that he had had no symptoms for years. A couple of weeks later the rancher received a letter from the Motor Vehicle Branch advising him that his driver's licence was cancelled immediately due to a medical condition. The letter told him that if he wanted to appeal the decision, he would have the opportunity to provide medical evidence showing that he was fit to drive.

As he couldn't operate his ranch without a vehicle, the rancher called the Motor Vehicle Branch to find out why his licence had been cancelled. He was told that the information was confidential and that he should consult his family doctor. His family doctor said he hadn't been informed about the cancellation but assumed that it must have had something to do with the dizzy spell. He referred him to a second heart specialist for another opinion.

By the time the rancher called our office, three months after the cancellation, he was livid. He said he didn't know what was going on and nobody had been able to give him a precise reason why his driving privileges had been taken away.

We called the Motor Vehicle Branch and found out that the first heart specialist had notified the branch that, in his opinion, the rancher should not drive until the cause of his dizzy spells was established. He had mentioned Meniere's syndrome as a possible concern. This action was taken in accordance with section 221 of the *Motor Vehicle Act* which provides that a doctor who believes that a patient has a medical condition that would render his driving a threat to himself or to the public shall report his opinion to the Superintendent of Motor Vehicles if the patient continues to drive a motor vehicle after being warned of the danger by the doctor. The specialist had seen the rancher on only one occasion and had not, according to the rancher, told him of his intention to notify the branch.

On receipt of such information, after a review by the branch's medical consultant, the Motor Vehicle Branch policy is to send out a letter of cancellation if the condition is considered to present a risk to public safety. We were advised by the branch that its policy is not to release any medical details to drivers in such instances or to reveal the name of the reporting physician; however, it had written to the rancher's family doctor at the same time as the letter of cancellation was sent out. The policy is based on the assumption that any doctor who reports a condition to the branch also notifies the family doctor who is a more appropriate person to discuss the matter with his patient.

By now the rancher had been forced to abandon his ranch and move into town. He insisted that he had had no more dizzy spells and felt as fit as a fiddle. In an effort to find out what was being done to determine the cause of his dizzy spells, we called the family doctor, who said he had never received the letter which the Motor Vehicle Branch said it had sent to him. The doctor said that he was unaware of a diagnosis of Meniere's syndrome but that an ear, nose and throat specialist could determine if it existed. At our suggestion, he arranged a referral to such a specialist.

Six months after the cancellation, we contacted the rancher to find out what progress had been made in diagnosing his condition, if any. He said that the second ear specialist told him that while he had a heart defect, it should not interfere with his ability to drive. However, the specialist had not sent a report to the Motor Vehicle Branch and nor had the family doctor, who said he couldn't do so without the specialist's consent. We called the specialist and arranged for the report to be sent to the branch as quickly as possible. We also contacted the eye, ear, nose and throat specialist who said that there was no longer any evidence of Meniere's disease and that he would forward a copy of his report to the Motor Vehicle Branch.

The rancher was happy to hear that information on his medical condition was at last reaching the Motor Vehicle Branch. In the meantime, his abandoned ranch had burned to the ground.

Nine months after the cancellation, we learned that the Motor Vehicle Branch, had sent the reports out to other specialists for review and given the rancher back his licence.

It is a frequent role of our office to assist complainants who fall between the cracks when communication breaks down. Had the family doctor received the letter sent by the department, swifter action may have been taken to help the rancher provide the department with the information it needed. His dilemma was worsened by the fact that departmental policy precluded the provision of medical information to drivers and by the fact that communication between the physicians involved and the department was minimal.

Citizens are easily confused and intimidated in their dealings with those in authority, whether public servants or physicians, and clear and thorough communication is fundamental as a matter of fairness and basic courtesy, especially where the consequences of a decision have major effects on an individual's life. At the time of this writing we were conducting a review of the department's policy regarding the release of information to drivers about their reported medical conditions.(CS88-189)

Corrections Branch

The Ombudsman's office made 135 visits to provincial correctional facilities in 1988. The purpose of these visits is to make the services of this office more readily available and to share the concerns of staff and residents. Such contacts also furnish us with the opportunity to become more aware of how and why a particular institution functions the way it does.

Some Continuing Concerns

Group Punishment

The issue of a sanction applied to an entire group because of the actions of one or several of its members arises from time to time in an institutional setting. We feel this is an area where authorities should take great care.

There may be situations where such steps are appropriate but we strongly suspect that these are limited. We are aware of one local director who moved into a new camp situation where 'heavying' (stronger inmates assaulting weaker) was common. Judicious manipulation of group privileges for example, access to television quickly put an end to that unacceptable behaviour and the camp settled down to appropriate types of activity. In this situation, a group sanction approach was probably not abusive and worked for the larger good of the operation.

Conversely, in another situation, an entire tier in a secure prison lost its outdoor exercise privileges for a day because the tier cleaner was late in completing his duties. We question this type of group sanction because the end result is likely to be retribution by the other inmates against the offending tier resident.

In a young offender camp setting, a staff member brought a minor infraction to the attention of the principal officer in charge of the shift: spitting against a camp building window, committed by an unknown youth. Revocation of a group smoke break had been the traditional punishment for such behaviour. It seemed to us that the principal officer in question showed good insight by refusing to apply that punishment. He pointed out that because of the soon-to-be-implemented no-smoking policy in youth facilities, the number of smoke breaks had already been reduced, and the imposition of such a punishment could result in the stronger residents ordering a weaker one to take the blame so the group would not lose one of their few remaining breaks.

Clearly, the issue of group punishment is complex and should only be utilized cautiously.

2. Food Service

Food service continues to be a vexing problem in some institutions. We have made the point before that this is probably a key factor among those services which make for a smoothly functioning institutional life. Some of the meals we experienced along the way were tasty and filling. Most meals produced in the system seemed to be at least satisfactory. Some, however, are poor. The question arises as to why there cannot be consistency in quality. A clue is provided perhaps in one of the camps which we have previously singled out for high standards. Although the meals here are fairly consistent in quality, we note, along with the residents, that the meals are appreciably better when one cook in particular is on the job.

It may be that with such a large element of resident satisfaction and behaviour at stake, corrections officials should pay close attention to the issue of the qualifications of the cook-managers when they are negotiating food service contracts.

3. Resident Committees

The Drost inquiry into last year's escape from Lower Mainland Regional Correctional Centre recommended that greater attention be given to the establishment and maintenance of a tier representative system. We believe the principle contained in that recommendation should receive much wider implementation. We find it difficult to understand the reluctance of a few local directors to establish some kind of resident representative mechanism within their facilities. The resulting benefits in opening communication and dispelling rumours are self-evident.

Some directors argue that a representative system does not ensure that everyone's voice is actually heard. A particular resident's concerns may never surface when a resident is out of favour with his unit representative. Such directors maintain that open camp meetings guarantee that each resident's voice is heard. We have no quarrel with that approach, so long as some system is in place which allows for a full airing of resident concerns and a meaningful sharing of information between staff and residents of the issues which mutually affect them.

We sat in on a few representatives' meetings this past year at Boulder Bay Youth Containment Centre and we were impressed with the open manner in which staff and residents together tackled the immediate problems of the camp. We noted at one meeting that 10 issues were comprehensively covered, issues which in the past would likely have ended up as complaints to an Ombudsman's officer. Solving problems at the source is preferable to the involvement of an external influence or authority. Whatever shape a residents' forum, we believe this is a feature of institutional life that the Corrections Branch should try to encourage.

Some directors insist that these approaches are not necessary in their facility because their door is always open to any inmate. However, from talking with residents in those institutions, we conclude that such directors may not be seeing things as they really are. Claiming to have an open-door policy is not sufficient. There may be many reasons why the person with a problem is unable to make it through that door. A wise director, it seems to us, would want to ensure the free flow of communication through more positive steps.

4. Inmate Accounts

Another puzzle is why some local directors do not regularly publish a statement on the status of resident welfare accounts. These funds are derived from inmates' work to provide amenities the system might not otherwise provide, such as a satellite dish. Because it is their money that is involved, residents are quite naturally interested in how it is spent. Absence of such information creates uncertainty and suspicion. The welfare account becomes one more niggling or petty annoyance in lives which are already subject almost exclusively to external control.

Some directors post this information as a matter of course. In these facilities, the matter never becomes an issue. The practice should be universal.

Community-Based Correctional Programs

Because residents in institutions do not have the same ease of access to the Ombudsman's services as people in the general community, representatives of the Ombudsman's office regularly visit all provincial health and correctional facilities to meet with both residents and staff who might have issues they wish to discuss.

Some private organizations or individuals operate programs on a contract basis with ministries such as the Solicitor General. These operations perform a public service and are responsible to the province. To establish contact with them, become more aware of the services they perform and make them aware of resources the Ombudsman's office could provide to their ongoing programs, we mailed out an Ombudsman kit in 1988 to approximately 150 community-based correctional operations. The kit consists of an introductory letter, a 1987 Annual Report, an Ombudsman poster and our office's two informational brochures. These went to every community-based operation from the small one-person enterprise which assures that youths in a community comply with the hours of service required by their probationary order, to the more lengthy and structured diversion programs such as those operated by the Salvation Army's House of Concord.

Remand Centre

This past year a group of Surrey residents pursued every avenue available to them to prevent the construction of a proposed Remand Centre in their neighbourhood. Court challenges, demonstrations, and media blitzes were unsuccessful.

As clearing for the proposed land site began, the citizens' coalition approached the Ombudsman's office seeking relief from what they saw as the end of a comfortable and safe neighbourhood lifestyle. However, we did not have the authority to deal formally with the matter because the principal authority involved was the Municipality of Surrey. The Ombudsman's office has the power to deal only with complaints against provincial government agencies.

We did correspond with the Mayor of Surrey and the administrative heads of the provincial government agencies involved, to suggest that, while the municipal authority had the right to determine issues such as the location of the proposed remand centre, we believed that any public authority has a duty of fairness to interfere as little as possible with the lives of those affected by the project. This was the position taken in the earlier Ombudsman's Report on the SkyTrain project. Copies of that report were supplied to the Municipality of Surrey, the British Columbia Buildings Corporation and provincial Corrections Branch, along with our observations about their responsibility in this regard.

Construction on this project is progressing. We hope that the residents' fears will not become reality and that they will be able to enjoy the quality of life they have previously known in the neighbourhood.

Lakeside Correctional Centre

The smooth operation of Lakeside Correctional Centre for women continued to be hampered in 1988 by the limitations imposed by the building itself.

Ideally, an institution of that size should have an area where disturbed and suicidal prisoners could be observed by staff and thereby protected from harm from themselves or others. Because there is only one room in the building suitable for this purpose, often upset and severely depressed women must be placed in the segregation unit because this is the only other place where staff are able to ensure their physical safety. There, they inevitably must spend a great deal of time in their cells, amid other inmates who have been sent to the "digger" as a disciplinary measure. Staff do not wish to inflict punishment when none is deserved but the duty to protect inmates from self harm overrides such sensibilities.

Similarly, inmates who are in danger of attack by other inmates, perhaps because of the nature of their offences or because they have been labelled as informers, must also be placed in the segregation unit for lack of a separate protective custody section.

Plans are well underway for a new insitution whose design takes these special needs into account. Until this plan becomes reality, staff and prisoners must cope with an unsatisfactory situation.

Willingdon Youth Detention Centre

Structural concerns were also central in a report on self-harming and assaultive behaviour among residents at Willingdon Youth Detention Centre. More information about that situation appears on page 18 of this annual report.

Branch to pay for inmate's surgery

An inmate at a correctional centre was physically assaulted by another inmate and required elective surgery as a result. Since the surgery was scheduled for sometime after his parole release date, the man was concerned that the Corrections Branch would not pay for his hospital costs.

We discussed the issue with the Deputy Director of Medical Services who stated that since the incident occurred while the resident was in the care, control and custody of the institution, it was the branch's responsibility and they would, therefore, pay for the surgery. (CS88-190)

Vegetarian diet not easy in jail

A resident of a forest camp was having difficulty following a tenet of his religion which requires him to be vegetarian. He was advised by his case manager to trade his meat for the vegetables on the plates of other inmates, but he felt this aggravated some of the other residents and made him stand out as different. Inmate kitchen workers gave him extra carrots and celery but he felt this also caused tension. Since he cannot eat meat or eggs or food cooked in beef fat, he had to hoard peanut butter sandwiches in the morning in order to get sufficient protein. At some meals, he ate just potatoes or beans. We discussed the matter with the facility's chaplain who took it up with the the director and the appropriate diet was provided.(CS88-191)

Shackling practice altered

On November 12, 1987, the Provincial Court ordered one year's detention at Willow Chest Centre at Vancouver General Hospital for a man with communicable tuberculosis who had refused or neglected to take adequate treatment for the disease. As a consequence of the court order, he was guarded in the hospital by officers of the Vancouver Pretrial Services Centre who kept him in shackles most of the time.

A social worker complained to the Ombudsman in March 1988 that the man was growing increasingly frustrated by the restraints. Our investigation determined that the officers kept the man shackled constantly even though he was cooperating with the treatment plan.

Following discussions with the Corrections Branch, the officers were advised to shackle the patient only when they had to be absent from the room or when they did not have the patient in direct visual contact.

One month later, we were contacted again after the treating physician had concluded that the man was no longer infectious. He was still under constant supervision because the court order had stated that the patient was to be detained until the Provincial Health Officer had approved his release. When we investigated, we found that the health officer was seeking full information from the treating physician. When he subsequently obtained that information, he wrote to the patient and the security officer was removed by the Corrections Branch. We then considered the matter resolved.

As a result of this investigation, the Corrections Branch changed its methods of supervising a person detained under the *Health Act*. We also reviewed the procedures taken by the Provincial Health Officer to release the patient from the imposed detention and assisted in bringing this involuntary confinement quickly to an end.(CS88-192)

Move jeopardized visits with kids

The inmate of a minimum security institution applied for a temporary absence to visit her children. A very recent, favourable report compiled by a probation officer in the community was on file, but just before her application was to be considered by the temporary absence panel, her family moved to an area covered by a different probation office. She was told that this move invalidated the original report and that a new community assessment could not be completed before her expected release from custody. At the Ombudsman's request, the institution director reviewed the file and concluded that a rigid adherence to administrative boundaries would be unreasonable. The panel subsequently recommended an absence be granted, and the director accepted the recommendation.(CS88-194)

Released inmate delayed medical coverage

Seven days before his release date, a man was seen by a Corrections Branch doctor who diagnosed an inguinal hernia and recommended referral to a surgeon. Five months after his release, the man sought medical services in the community. He requested that the Corrections Branch pay for the resulting fees because he had incurred the injury while in custody and had not yet obtained medical insurance.

We did not support the complainant's request for funds from the Corrections Branch because we concluded that his delay in seeking both medical attention and medical coverage was unreasonable. We determined that he could have obtained medical insurance within a month after his release at a cost that he could afford. The complainant eventually had the surgery performed after he received medical insurance.

As a result of this case, however, we felt that the Corrections Branch could be more diligent in advising inmates of their need for medical coverage upon release. The institution agreed to advise inmates prior to their release about the Medical Services Temporary Assistance Plan and to provide application forms for those whose medical needs might continue after release from custody.(CS88-196)

U.S. exchange rate forgotten

A $100 money order sent to an inmate in U.S. funds was registered in his trust account as $100 Canadian by the institution's business office. By the time the error was pointed out, a money order for the wrong amount had already been deposited at the bank. We brought the matter to the institution's attention. There was a lengthy delay in the bank's tracing of the order, but the business office staff persisted and eventually reported to our office that the complainant's account had been corrected.(CS88-197)

Attempted suicide at youth centre probed

A youth attempted suicide by hanging while remanded in Willingdon Youth Detention Centre on a serious charge. Staff acted quickly and resuscitated him and he was hospitalized immediately. The Corrections Branch investigated and determined that the youth had not given staff any cause to suspect he might be contemplating suicide.

We were advised of the investigation and found no reason to question its conclusion. Unfortunately, the youth did not make a full recovery. When he was later released from hospital, he returned to the centre in a mentally and physically ill state. We did not believe his return to detention was appropriate in terms of rehabilitative care; however, the court ruling that he be held on remand was still in effect.

Fortunately, the centre could provide one-on-one care and other residents rallied round to visit with him and provide stimulation. Meanwhile, a number of agencies, coordinated by the youth's local probation office, set about finding a suitable placement for him and, through the cooperation of the Corrections Branch, Probation Services, the Ministry of Social Services and Housing and the Ministry of Health, a special care facility was found. When Crown Counsel brought the matter back into court, the youth was judged unfit to stand trial due to his mental illness.

This office has long been concerned about the coordination of services to children who have needs which cannot be met by any one ministry or agency. For these reasons, we have been monitoring the functioning of Inter-Ministry Children's Committees. This case is an example of effective inter-ministry cooperation. (The workings of the IMCC are discussed more fully in Section C of the introduction to this report)(CS88-198)

Parolee was telling truth

When parolees enter the community, they must meet certain conditions established before parole is granted. Failure to meet the conditions could result in a suspension of parole and the return of the parolee to custody.

A man complained to us that his parole was suspended even though he had done nothing wrong. He felt that wrong information had been given to the parole board member who suspended the parole.

Our investigation found that an initial police report stated that the parolee had lied to police about the cause of a motorcycle accident and the number of motorbikes involved. The police further claimed that the complainant was associating with "bikers".

However, we found that the complainant worked in a motorcycle shop. When we reviewed later reports from the police, we found that, contrary to the first report, the parolee had indeed given the correct version of the accident, had accepted his responsibility and had not tried to mislead anyone regarding the cause of the accident or the number of motor bikes involved.

When the investigation findings were discussed with the parole board member and the complainant's probation officer, parole was reinstated.(CS88-199)

Guards responses inappropriate

On a regular visit to an open custody camp, a number of youths complained to the Ombudsman officer about the behaviour of two staff members. The residents claimed one officer frequently insulted them and tried to goad them into a response that could only result in a negative consequence for the resident. A number of residents reported having witnessed a total of four incidents in which another staff member had seemingly lost his temper and had roughed-up a different resident on each occasion.

Complaints of this nature, if substantiated, could lead to serious consequences for the staff concerned. We believed these complaints merited thorough investigation, but since the *Ombudsman Act* precludes Ombudsman officers from testifying at tribunals, such as grievance or arbitration hearings, we passed the information along and requested that this thorough investigation be carried out by the Inspection and Standards Division of the Corrections Branch.

While the Inspection and Standards investigation did not substantiate the assault allegations, the report noted that the staff member involved had failed to document the incidents in question. With regard to the allegations against the other officer, the report concluded that he had responded inappropriately, albeit under some provocation from residents.

The district director responded to the report by scheduling a spring workshop for the camp's staff. On the agenda will be a refresher course on the appropriate use of force and on the correct way to document such incidents. The workshop will also provide additional training in communications skills. It is to be hoped that the courses will lead to improved relationships between staff and residents.(CS88-200)

Case's conclusion inescapable

A prisoner at Lakeside Correctional Centre had been denied a transfer to a minimum security institution. She believed the decision had been based, at least in part, on her having escaped custody when incarcerated as a juvenile. She believed it was unfair to use this as a criterion.

The fairness of the decision became academic when, before our enquiries were completed, the complainant attempted to escape custody when being escorted to the hospital, thereby demonstrating her unsuitability for a low security setting.(CS88-201)

Camp head a dragon slayer

A group of residents in a youth camp were playing a modified and rather simplified, version of the fantasy game, Dungeons and Dragons. Some staff looked unfavourably upon this exercise; others seemed not to care one way or the other.

Wishing to advance to a more complex level of play, the residents raised the concern that they wanted to obtain the board version of this popular game. The director, however, was opposed to this.

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Dungeons and Dragons is a game which centres upon fantasy role-playing involving battles with mythological creatures. Some claim it has links to the occult. The director based his decision on a previous experience in which one youth who was playing the game "flipped out" and created such an uproar with his cabin-mates that very quickly the peace of the whole camp was disturbed. Recognizing that youth facilities can contain some individuals who are emotionally fragile and that a consequence of such fantasy games could be to upset these persons and the institution, we supported the director's position.(CS88-202)

Access to Satanic Bible denied

Stating that he believed Satanism is a religion, a resident of a youth detention centre complained of being denied access to the "Satanic Bible".

The Corrections Branch policy on inmate access to religious materials is a liberal one and encompasses religions which would not be considered traditional or "mainline". However, the policy includes a proviso that access may be denied if the religion or belief might "violate the good order and security of the institution." There is a similar policy which enables the director of a correctional facility to prevent the entry of any material which might adversely affect the operation of the institution.

Whether or not one deems Satanism a religion, we found no grounds to conclude that the director acted unreasonably in this instance.(CS88-203)

Raffle a chancy affair.

A group of inmates had organized a successful raffle, and had given the proceeds to a local charity.

A prisoner who remained incarcerated after the conclusion of the raffle believed the institution was to blame for his wife's unfaithfulness. He claimed that an inmate who had been involved in operating the raffle had taken the complainant's wife's telephone number from a ticket stub, had called her and, upon his release, had established a relationship with her.

We learned that the raffle tickets clearly indicated it was an inmate-run endeavour. Even if indeed this had been the manner of the two people becoming acquainted, we could find no reason to conclude that the institution was responsible for either the wife having listed her telephone number or for the subsequent relationship.(CS88-204)

Inmate sit-in resolved

In August 1988, about 40 prisoners from the wing at the Lower Mainland Regional Correctional Centre, which houses primarily remanded inmates, staged a sit-in in the exercise yard.

Through the district director, they requested that a representative from the Ombudsman's office go to the prison to discuss a number of concerns and complaints.

An Ombudsman officer met with a number of the prisoners in the yard, in the company of the director of the wing and his deputy, in the role of neutral investigator rather than as an advocate for the inmates. A number of complaints were dealt with promptly to the satisfaction of staff and inmates. A few other requests were to be considered later by the administration but were subsequently denied. We found no grounds to recommend otherwise.

The sit-in had been entirely peaceful and the district director gave an assurance that an orderly return to the building would guarantee no disciplinary action would be taken against the participants. The inmates, a number of whom had taken part in discussing the complaints, returned to their cells in the late afternoon.(CS88-205)

Please knock before entering

Male residents of a forest camp complained that female staff would enter their individual rooms without prior warning during the taking of a camp count. On occasion, this proved embarrassing to residents.

The issue was raised with the director who reviewed it with staff and issued a memo cautioning all staff, especially females, "as a matter of courtesy and human dignity. . . to give a quick knock on each inmate's door prior to entering for the purpose of taking a count." The director further pointed out to his staff that "for the purpose of search and/or when there is reason to believe a breach of security has occurred, that prior warning is not necessary". The director's action appeared to be a very simple measure, but underscored the sensitivity that is needed in some relatively minor situations in order to prevent these from growing into a major source of frustration and discontent.(CS88-207)

Inmate savings found

A person on remand tried to order glasses but did not have any money in his account to contribute to the cost. He needed glasses to prepare for his court appearance and to see across the courtroom.

On investigating, we found that he had served more than two years in a federal prison in Quebec before escaping in 1982. In federal custody, inmates have mandatory savings deducted from their inmate wages. We contacted Quebec and found that they had held this money since his escape. They were pleased finally to send it somewhere. However, they could not send it all to a provincial prison because he was still required to keep a minimum of $80 in compulsory savings. Through our contact, the inmate was able to transfer $150 and purchase his glasses. We considered the matter resolved.(CS88-209)

Making a case for letter writing

The residents of a youth centre complained that they were not permitted to correspond with friends who were incarcerated in other detention centres. The reason given by the centre management was that they did not want to encourage questionable peer-group contact. Such direct communications were not viewed as conducive to rehabilitation.

The B.C. Corrections Branch Youth Manual of Operations states:

". . . young persons have rights including those stated in the Canadian Charter of Rights and Freedoms. Section 2(d) of the Charter guarantees freedom of association, subject to only such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. . .

". . . restrictions shall not be imposed arbitrarily or without good cause but shall be for one or more of the following reasons:

"1. The contact or communication is or may adversely affect the health, safety or well-being of the concerned youth(s). . .

"2. The contact or communication represents a real or potential interference to the management, operation, discipline or security of the youth custody centre."

In light of that policy statement which seemed to allow some administrative discretion, we suggested that the centre's blanket policy seemed not to allow for discretion that would take account of individual circumstances.

It seemed to us that any supportive relationship had to be viewed as good for the welfare of the individual involved. While there might well be times when direct communication between residents within different facilities might be mischievous in intent or otherwise inappropriate, there would just as likely be occasions when such direct communiation would clearly not be harmful and might well be beneficial to the individuals concerned. Because the residents' letters were checked internally by staff, we could not see why there would be a problem for the appropriate staff to make a decision about each situation.

The facility resisted our suggestion, arguing that judges, in passing sentence, will often restrict association with an offender's co-accused or with those of "bad character." Staff continued to maintain that "allowing continued contact with residents who were both incarcerated would be encouraging the negative peer contact cycle." In response, we argued that the logical implication of their reasoning would be to isolate each resident at the centre to avoid negative peer contact with other incarcerated residents. We suggested that all contact between incarcerated persons is not necessarily negative. Part of correctional staff professional duties is to make decisions on the appropriateness of contact between inmates. If there were a specific prohibition issued by a judge about contact with certain individuals, staff would be aware of that from the record and would be able to ensure adherence to that order.

The facility's practice was subsequently altered to permit appropriate correspondence with friends in other correctional facilities.(CS88-210)

Ministry of Transportation and Highways

A new area of complaints with this ministry evolved from the provincial government's privatization program. There was a need to identify a process by which complainants could quickly make their concerns about inadequate maintenance known to the appropriate highway maintenance company. A high volume of complaints each year involves drivers' licences and vehicle registration. The Motor Vehicle Department was made a part of the new Solicitor General's ministry during 1988, and complaints about the MVD are discussed in this report under that authority.

Resolved	26
Not resolved	0
Abandoned, withdrawn, nonjur:	12
Not substantiated	16
Declined, discontinued	16
Inquiries	15
Total number of cases closed	85
Number of cases open December 31/88	58

Speed limit request reviewed, granted

Concerned for the safety of school children getting on and off school buses, a resident in a rural area felt that a reduced speed limit should be in effect on a stretch of highway. Based on the accident record in a quarter-mile stretch of the highway, the local police officer supported the concern for a reduced speed limit. However, the local office of the Ministry of Transportation and Highways was reluctant to agree. As a consequence, this woman complained to the Ombudsman's office.

When contacted by an Ombudsman investigator, the ministry agreed to reassess the problem. This review resulted in the woman's request being granted. Signs were installed warning of a reduced speed limit of 50 km/h.(CS88-211)

Residents on the road to a solution

During 1986, the residents in a community complained that their only access road was affected by an adjacent military rifle range. The direction of rifle fire was toward the road, with the result that the road, for safety reasons, was only open at set times. In practice, however, the guards posted on the road often delayed the scheduled road closures due to delays on the firing range. To motorists enroute to work, engaged in family activities or making commercial deliveries, these delays were costly and troublesome. The local ratepayers' association complained to the Ombudsman's office.

In our investigation, we found that the residential area had been approved initially with access only by water. As the community developed, hydro was installed. The most suitable route, across the rifle range, was used for the hydro lines, with federal government permission. B.C. Hydro also built a road to access the power line for maintenance and, over time, residents began to use this road for access to the area. The Ministry of Transportation and Highways had also reviewed the situation and had acquired the right-of-way for an alternative, safer route. However, no funding was available in 1986 to develop this new right-of-way.

For the short term, the residents wanted to pursue a solution with the military authorities to use the existing road but, from the federal government's point of view, this seemed unworkable due to the potential for injury. We contacted the local member of parliament on behalf of the residents who took up the matter with the Department of National Defense. The department maintained that the range was needed by trained military personnel, trainee recruits and authorized civilian clubs, and that the potential for injury from ricochets made an increased public-use arrangement unwise.

We concluded that the preferable solution was for the residents to work jointly with the federal and provincial governments toward the construction of the new road. Finally, in 1988, after the enquiries of the residents and our office, and the publicity surrounding the case, the federal and provincial governments agree to split the cost of construction for the new road.(CS88-212)

Quick response impresses complainant

The Ministry of Transportation and Highways required a small part of a landowner's property for highway development, an area calculated at about .03 hectares, and paid him one dollar.

After brooding over the issue for a year and questioning both the area taken and the one-dollar payment, the landowner came to the Ombudsman. We asked the ministry to review this case and a property services staff member said it would be done immediately. One hour and five minutes after our inquiry, the ministry confirmed there had been an error in the calculation: .6 hectares had been taken. Ministry staff met the complainant promptly and agreed to compensation of $1200. The landowner's respect for the ministry, and the ministry staff member in particular, rose immeasurably.(CS88-213)

Highways wanted 10 feet, no more

The Ministry of Transportation and Highways purchased a 10-foot strip of property from an elderly property owner for highway widening. However, the man was concerned that four mature trees which were planted when the property was first purchased in 1946 and acted as a sound barrier, would be lost when the strip was taken. He asserted that the ministry should either buy out the whole property or at least move his house back on the property. He subsequently complained to the Ombudsman.

In our investigation, we found the ministry offered a totally acceptable price for the strip of land taken. It also offered to replant mature trees or a hedge, or build a fence up to six feet high. This offer was initially refused.

We concluded that removal of the strip was necessary for the development and that it did not spoil the block of land remaining. There was no public need for the rest of the land. The house still had a 40-foot setback from the right-of-way boundary. Relocating the house was possible but the property, now zoned commercial, had been listed for sale as commercial property.

Assessing all factors, we concluded that the ministry's position was reasonable and proper. When we explained the ministry position to the complainant, he agreed to accept a fence of his own design but to ministry specifications and at ministry expense.(CS88-214)

Contracting practice not unfair

A gravel truck operator had worked under contract for the Ministry of Transportation and Highways for 10 years. He was an experienced operator who had worked his way up to a favoured position with the ministry. However, the system for awarding of contracts was changed in 1988 to prevent the appearance of a closed shop. In spite of having superior experience over the other bidders, the truck operator was placed in a system where such seniority was not taken into consideration. As long as bidders met certain criteria, the low bid would win. In the event of identical bids for hourly rates, names would be drawn from a hat. Because he had spent a considerable amount in upgrading his equipment in anticipation of the coming season, this man brought his concerns to the Ombudsman.

Upon investigation, we could find no aspect of the current hiring practice that could be characterized as administratively unfair. Long-standing and productive working relationships were perhaps strained or destroyed in the process, but the practice of taking the low bid of a qualified bidder is not in itself unfair.(CS88-215)

Road for town also electrifying

Longworth is a small community, established over 60 years ago on the north side of the Fraser River about 65 miles East of Prince George and without road access, other than by crossing the ice on the Fraser River. This was extremely hazardous when the ice was forming or melting and impossible in a winter not cold enough to form an ice bridge.

The ministry had started work on a bridge and a connecting road to Longworth, but residents felt the ministry was giving the road a low priority. The last two kilometres remained incomplete for more than two years. Construction was repeatedly interrupted by heavy rains and bad weather which washed out completed sections or delayed the work. Residents brought their concerns to the Ombudsman.

In June 1988, liaison began between the Ombudsman's office, the Longworth Community Group and the ministry's regional office at Prince George. Another important factor arose in the fall of 1988 - the electrification of Longworth became contingent upon the completion of the road because B.C Hydro wanted to use the road allowance for its power lines. The ministry agreed to coordinate its work with the B.C. Hydro Rural Electrification Program and undertook to have a road at least accessible by four-wheel drive completed by the winter of 1988.

On December 22, 1988, the last two kilometres of an all-weather, all-vehicle road were completed, linking the community of Longworth with the rest of the province. To quote a representative of the Longworth Community Road Project, "It's the best Christmas present the people of Longworth could have had."(CS88-216)

B.C. Assessment Authority

Most of the complaints we receive about the B.C. Assessment Authority are from property owners who think that their property was assessed at too high a value. In such a case, we refer the complainant to the appeal mechanism set out in the *Assessment Act*. Such rights of appeal must be exhausted before an Ombudsman investigation can be considered.

Resolved	2
Not resolved	0
Abandoned, withdrawn, nonjur:	0
Not substantiated	10
Declined, discontinued	18
Inquiries	6
Total number of cases closed	36
Number of cases open December 31/88	0

Assessor not invading privacy

An individual contacted our office because he felt that his privacy had been invaded. In past years, assessors were satisfied with inspecting his land and viewing his home from the outside. This year, however, the assessor insisted on inspecting the inside of the complainant's home.

We found this complaint not substantiated. Section 13 of the *Assessment Act* says that "... an appraiser may for any purpose relating to assessment enter into or on and inspect the land and improvements." The act defines the word "improvements" to mean "buildings, fixtures, structures and similiar things erected on or affixed to land. . . ." It was clear that the assessor had the right to inspect the interior of the complainant's home to get a better idea of its value.(CS88-217)

Occupant liable for assessment

A woman owns a mobile home on a lot she rented from a third party. Because the property is not hers, she was surprised when she received an assessment notice for the lot. She felt that she should be assessed for the mobile home, but that the property's owner should have to deal with the property assessment and the resulting property tax.

According to the *Assessment Act*, it is the occupant of property who is liable for assessment and taxes for that property, not the owner. Therefore, we found that this complaint was not substantiated.(CS88-218)

Purchaser unhappy with assessment

An individual bought property early in 1988. He was unhappy with the value at which the property had been assessed in 1986/87. He thought it was quite unfair that, in 1988, he was no longer able to appeal this earlier assessment. He thought he should have, at the time of purchase, been notified of the assessed value by the assessment authority and been given an opportunity to appeal.

We informed the complainant that appeal periods set out by statute cannot be amended or changed by the B.C. Assessment Authority. We also pointed out that it is a purchaser's responsibility to inform himself of the assessed value of property if this value is of interest to him.(CS88-219)

B.C. Council of Human Rights

Our office receives few complaints against this authority. Those that we receive typically concern the amount of time it takes the Human Rights Council to process the complaints. In one such 1988 complaint, when we "tracked" the complaint through the Council process, we found that none of the delay had been attributable to the Human Rights Council. The complainant had been the cause of his own delay.

Resolved	0
Not resolved	0
Abandoned, withdrawn, nonjur:	2
Not substantiated	4
Declined, discontinued	2
Inquiries	
Total number of cases closed	8
Number of cases open December 31/88	2

Confidentiality not breached

A person complained that, despite his attempts to repudiate a woman's allegations of sexual harassment in the workplace, the council went ahead with a hearing. He was also concerned that after the council's decision - which found the allegation warranted - his name was published in local newspapers.

We advised the complainant that once the council receives a complaint, it must investigate the issue and, if warranted, convene a Board of Inquiry. Council decisions are a matter of public record and there were no breaches of confidentiality when the newspapers published the decision of the council and his name.(CS88-220)

B.C. Ferry Corporation

Resolved	4
Not resolved	0
Abandoned, withdrawn, nonjur:	2
Not substantiated	2
Declined, discontinued	2
Inquiries	0
Total number of cases closed	10
Number of cases open December 31/88	4

Squabble with neighbour cut access

A resident of a gulf island owned property where the only legal access was by water. For many years, he had used a land access across adjacent property with the consent of the owner. That property changed ownership and a disagreement arose with the new owner who promptly forbade his neighbour to drive over the property.

The resident was forced to return to his water access. But in the interim, the B.C. Ferry Corporation had built a new terminal and wharf. To stabilize the wharf's "floating heads", a "stiff leg" (steel pipe) and a chain had been placed between the floating head and the shoreline, interfering with the man's water access also. Now, his only access was via canoe below the wharf or around the floating head.

B.C. Ferry built the wharf without the knowledge that the resident had no land access. We approached the ferry corporation with this information. As a result, the corporation removed the stiff leg and weighted the chain to the sea bed which allowed vessels to pass over it.

A more suitable solution would be to create a legal land access. A longer route was possible but not practical due to cost and engineering concerns. Another option was to build up the foreshore to create a driveway, but the cost and environmental factors were against this. The short route via the neighbour's property was, at this point, not an option. So, water access it is, caused by an unfortunate disagreement between neighbours.(CS88-221)

B.C. Housing Management Commission

Resolved	10
Not resolved	0
Abandoned, withdrawn, nonjur:	4
Not substantiated	18
Declined, discontinued	2
Inquiries	1
Total number of cases closed	35
Number of cases open December 31/88	3

Political interference alleged

A community-based society came to the Ombudsman alleging inappropriate political interference had been brought to bear in awarding to another society a contract to provide/administer public housing while rejecting their better-qualified proposal.

This type of public housing is administered by way of contracts for housing units publicly funded and selected by the British Columbia Housing Management Commission (BCHMC). In this instance, the competition was among proposals for seniors housing in the downtown Vancouver area. Two hundred and fifty units were allotted for this area, meaning that several proposals could be accepted if they averaged 80 - 90 units each. The total unit allocation incorporates a degree of flexibility in order to accommodate precise unit numbers of specific worthwhile projects.

Upon investigation, it was evident that BCHMC operates in an environment in which political influence is constantly being brought to bear. They receive approximately 50 - 60 letters per year from MLAs who, at the request of applicant societies, endorse the virtues of a particular society's proposal for the MLA's constituency. It was a conclusion of this office that the pressure brought forth in this manner from all points on the political spectrum indeed puts additional pressure on BCHMC to ensure that project selection is based on objective and defensible criteria. The scoring matrix used by BCHMC incorporates five different categories of project design and analyses for which the total possible score is 450 points. Projects are ranked from highest to lowest according to their scoring level, and the final ranking will include an analysis of intangible factors which must be taken into consideration.

In this instance, the two top proposals received funding. The fourth ranking proposal submitted by the City of Vancouver was withdrawn, leaving a decision for BCHMC to choose between No. 3 and No. 5.

The No. 3 proposal required the demolition of a brick building with some heritage value which, at the time of application, housed a neighbourhood food bank and other community services. It was felt by BCHMC that adequate lead time should be allowed for relocation of the food bank and other services. The result was that this project was rejected for the 1988 competition and invited to reapply in 1989.

The other society's project advanced to No. 3 and was awarded funding by the minister on BCHMC recommendation. The complainant group objected to this society's project because the building and grounds would occupy approximately one-quarter of the land it currently used for community garden plots. As a gesture of good faith, the funded group, in conjunction with the City of Vancouver, offered to assist in the provision of a water system for the remaining land to enhance the productivity of the plots.

We found the final project selection to be based on objective criteria and the complaint of political interference to be unsubstantiated.(CS88-222)

Prompt action on back door

A woman complained that the B.C. Housing Management Commission had not repaired the back door to her housing unit. It had been damaged by children playing nearby. As the result of being struck by a baseball, the door was stuck closed and could not be opened. Since the unit's front door was also sticking occasionally, the woman was concerned about fire exits for her family should such an emergency arise.

The matter was quickly resolved by the commission. We contacted the commission on April 22, 1988 and the door was repaired by 4 p.m. that afternoon.(CS88-223)

B.C. Hydro and Power Authority

In 1988, our office handled 316 complaints against this authority as compared to 237 during 1987. The majority of the complaints we receive are still directed toward some aspect of Hydro's collection of unpaid residential accounts. However, the overall numbers of complaints requiring investigation are down and the amount of time spent on each complaint by Hydro staff and our office has been significantly reduced. The main reason for the reduction has been the appointment of a Regional (Complaint) Reviewer in each of Hydro's four divisions. The Regional Reviewer position is but one of many changes that were made by Hydro in 1988 in response to the systems study of Hydro's collection of residential accounts conducted by this office in 1987 and publicly reported last year (see page 14)

Resolved	57
Not resolved	0
Abandoned, withdrawn, nonjur:	19
Not substantiated	50
Declined, discontinued	176
Inquiries	14
Total number of cases closed	316
Number of cases open December 31/88	21

Bill can wait on investigation

A Hydro customer contacted our office to complain that her last three hydro bills were three times her previous consumption rate. She believed that someone had been "tapping" her line. She had called a Hydro representative who told her it would be two months before the matter could be investigated. In the meantime, she was told she would have to pay the disputed bills or risk being disconnected.

We contacted a B.C. Hydro supervisor and reviewed the situation with him. We were told that a temporary staff person gave the customer incorrect information. The supervisor arranged to postpone any collection action while the complainant's bill was in dispute and to have a service representative call her to examine consumption patterns and explain the consumption averages of the various appliances in her house.(CS88-224)

Deposit requirement avoided

A person who operates a fish buying and storage business on Vancouver Island called our office to complain that B.C. Hydro had demanded that he pay a security deposit on his business account. He said he was a long-standing Hydro customer and, as such, contended he should not have to pay a deposit.

We investigated and found that the complainant was, indeed, a long-standing customer of Hydro. However, his account showed he only had a marginal credit rating over the past couple of years. Coupled with the fact that he did not have any existing security deposit with Hydro, Hydro's request did not seem inappropriate. The problem was resolved, however, after we talked to a Hydro supervisor who agreed to allow the complainant to sign a corporate guarantee. This would eliminate the requirement to pay a deposit. We advised the complainant that he should arrange to see the local supervisor and sign this document.(CS88-225)

Security refunded ended up in wrong hands

A computer company owner had been required to pay a $72 security deposit to B.C. Hydro. She subsequently closed the business down and left the country for six months. In the meantime, B.C. Hydro sent the security deposit refund cheque to the management company of the building where the computer company had been located. The cheque was made out to both companies. The management company cashed the cheque.

The owner returned to the country to discover the error. She called someone at Hydro who acknowledged that the cheque should have been made out to her company and sent in care of the management company. However, the representative said Hydro would neither reimburse her for the $72 nor credit it to her new business account.

We outlined the circumstances to the appropriate Hydro supervisor and he immediately revised the earlier decision not to reimburse the $72. Hydro issued the complainant another cheque for the security deposit refund and said they would attempt to collect the money from the management company.(CS88-226)

SIN battle still being waged

A man attempted to open a Hydro account but a staff person told him his application would not be processed unless he provided his Social Insurance Number (SIN). The man complained to the Ombudsman.

The ever-increasing use of the SIN as a unique identifier is an issue that our office wrestled with in 1988. At present, there are no laws in place, federal or provincial, to prevent any private or public department, corporation or agency from requesting a person's SIN. Many persons will simply provide the number on demand. However, if people refuse to provide their SIN, they stand a good chance of being refused the service they desire.

We have had some success with some provincial ministries and Crown corporations in curbing the proliferation of SIN usage. B.C. Hydro's policy, introduced in 1988, stipulates that when a person refuses to provide the identification number, the refusal would not by itself preclude that person from obtaining the requested service. We were also assured by the authority that the SIN is only collected for internal use and not used externally as a link to other data banks.

In this particular case, we were told by Hydro that the person with whom the complainant had spoken was new on the job and was unsure of Hydro's policy on the issue.

By way of resolution, the complainant received a call about the matter from a Hydro representative that put the issue straight and his SIN was removed from existing Hydro documentation.

In addition to our efforts to tighten up on the use of the SIN by provincial authorities, we should point out that in Ottawa, there are also a number of groups actively seeking changes to the SIN legislation. We note also that some political will has emerged recently at the federal level to modify existing SIN legislation on account of the concerns raised by the federal Privacy Commissioner.(CS88-227)

Estimated bill too high?

A woman's Hydro meter had been running slow for quite a while and then eventually stopped. Eventually, she received an estimated billing for the time period in question, of which she paid half. The woman was willing to make payment arrangements on the remaining balance but instead received a disconnection notice. The woman then contacted the Ombudsman's office.

We felt the disconnection notice was inconsistent with Hydro's policy of making payment arrangements for estimated bills. It was discovered, however, that the complainant's husband had gone on disability for a time and their regular Hydro account had fallen into arrears. The disconnection notice had been processed as a result of this debt but the estimated billing had become entangled with the original arrears causing the confusion.

The complainant was able to negotiate a satisfactory payment arrangement with Hydro. However, she was still concerned that the estimated bill may have been too high because she and her husband had completed some energy-saving renovations on their home since the time that the meter started to malfunction. Hydro advised the woman to review her winter consumption in April and contact Hydro again if she believed the estimated billing was too high.(CS88-228)

Swamped boat not Hydro's fault

A person had been working on contract at a B.C. Hydro camp and had tied his boat up at the nearby Hydro wharf. During an evening in September 1987, the nearby Hydro dam spill gates were opened to release accumulated water. The complainant said that this action caused his boat to become swamped. In his opinion, the Hydro dam operator had been negligent and he should be reimbursed the damage to his boat.

At our request, Hydro reviewed the matter and found that the incident had occurred during a period of heavy rainfall. The water released through the spill gates would have soon crested over the free spill. Therefore, in Hydro's opinion, the end result would have been the same. The dock was some distance away from the dam and the complainant had left his boat uncovered during a heavy rainfall. We agreed with Hydro's position that the dam operator was not negligent.(CS88-229)

Consumption doublechecked, found correct

A Hydro customer believed that she had been overbilled for power consumption in early 1988. A subsequent test, at her request, indicated her meter was accurate, but she was convinced there was no way she had used as much power as her Hydro bills indicated.

Hydro agreed to our request and reviewed the complainant's consumption figures and meter test results. After everything had been double-checked, the totals remained unchanged. We explained the findings to the customer and pointed out that once the electricity leaves the meter on the customer's side, it is the customer's responsibility. If there are any power leaks or other causes of excessive usage, it is up to the customer to rectify it, not Hydro.(CS88-230)

Overdue bill not in husband's name

A Hydro customer, separated and on income assistance, called the Ombudsman to complain that Hydro had threatened a service disconnection if her overdue bill was not paid. She said that half of the outstanding amount had been incurred by her ex-spouse prior to the period he had lived with her. She did not see why she should have to pay the whole amount now that they were once again living apart.

We asked Hydro to double-check the account detail. They confirmed that the account had been in the woman's name over the period in question, and that the husband had no separate prior account. Since the bill was legitimate, we suggested to the complainant that she try to negotiate a crisis grant with the Ministry of Social Services and Housing. The bill was subsequently paid by the ministry and her power stayed on. We were able to close our file as resolved.(CS88-231)

Concern for dog blew its cover

A person contacted our office after her Hydro service had been disconnected for outstanding arrears. She had no problems with the disconnection but was upset that the Hydro representative had called her landlord and informed him about a dog. She said she was now threatened with eviction for having a dog.

We checked with Hydro. The service representative had called the landlord when he did the disconnection because he noticed that the house appeared empty except for the dog. He thought the animal had been deserted. We found this response to be reasonable and advised the complainant that we could not substantiate her complaint.(CS88-232)

Insurance Corporation of British Columbia

In 1988, the volume of complaints received against the corporation was somewhat higher than that received in 1987. However, the new procedures described below have lead to a more efficient resolution of public concerns.

Resolved	142
Not resolved	0
Abandoned, withdrawn, nonjur:	61
Not substantiated	52
Declined, discontinued	263
Inquiries	34
Total number of cases closed	552
Number of cases open December 31/88	91

In 1988, significant steps were taken toward the achievement of two central goals of this office.

1. Coordination of Individual Complaint Handling

It is a goal of the Ombudsman's office to encourage ICBC to continue improving its internal complaint handling procedures to a level where our involvement can be limited to those individual cases where all other reasonable avenues of redress have been exhausted.

In recent years, the Ombudsman Enquiries division of ICBC's Public Enquiries Department has provided valuable assistance in collecting the file information necessary for our investigations and in facilitating the resolution of complaints by presenting complainants' concerns to the appropriate personnel in the corporation.

In June 1988, ICBC accepted our suggestion that an additional staff member be assigned to Ombudsman Enquiries to provide a more complete investigative service with respect to complaints referred from our office.

Under the modified procedures, we immediately review all complaints received against the corporation to identify those cases where our direct involvement appears necessary. We refer the others to ICBC's Ombudsman Enquiries division and inform the complainants by letter that a representative of the corporation has been asked to look into their concerns and may contact them directly to negotiate a resolution or provide an explanation. Complainants are invited to contact our office again if they are not satisfied with ICBC's response or if clarification from an independent source is specifically requested. ICBC's Ombudsman Enquiries officer reports the results in writing to our office for our review and followup as necessary.

The implementation of this modified referral procedure has clearly enhanced the coordination of individual complaint handling between our office and the corporation to the benefit of complainants. Since its commencement, we have been able to handle approximately 60% of our new ICBC complaints in this manner with a need for follow-up arising in less than 20% of the cases referred.

2. Establishing an Internal Administrative Fairness Review Process

In the second major development, the president of ICBC accepted our proposal that the Public Enquiries Department assign selected personnel to the specific task of identifying the systemic sources of administrative unfairness within the corporation. The groundwork for this proposal was laid in late 1988 and implementation was scheduled for early 1989.

Over the past two years, this office has initiated and completed a number of systems studies in close cooperation with other provincial authorities. However, the goal is to help authorities develop an internal capacity to conduct reviews of the fairness of their own laws, policies, procedures and practices.

Considering that ICBC already had well established quality control, training and complaint handling programs, we concluded that the corporation was ideally suited to play a leading role in developing a model for conducting internal administrative fairness reviews.

Any subsequent contribution that our office might make to an administrative fairness review of ICBC is likely to be all the more valuable if we are able to complement and build upon work already accomplished within the corporation. If our experience with other provincial authorities is any indication, the use of the systems approach in promoting administrative fairness has the potential both to reduce costs and to enhance public acceptance of the Corporation.

DPP debt not really owing

A woman was convicted of impaired driving in 1983. In 1988, her application for a B.C. driver's licence was refused by the Motor Vehicle Branch because of an outstanding debt with ICBC.

The debt was for 10 points recorded against her licence under the Driver Point Premium (DPP) system, as the result of the impaired conviction five years earlier. Under the DPP, drivers with five points or more must pay a premium to renew their driver's licence. More points incur a higher premium. The Motor Vehicle Branch records the points issued by police and ICBC issues the premium notice and collects the money.

The woman claimed she had given her driver's licence to the police on the night of the offence in 1983 and had not had a driver's licence since. She contended that she should not have to pay a premium to maintain a driver's licence which she did not have.

The woman tried to deal with the matter herself by contacting ICBC Customer Collections but was not able to convince the representative that she was telling the truth. ICBC had no record of her surrendering her licence.

The woman had no way to prove her case and subsequently appealed to the Ombudsman's office for help. We contacted the Motor Vehicle Branch. A manager confirmed that the woman's driver's licence had been received in 1983. We then called an ICBC Customer Collections Manager. He still insisted that ICBC had no record of the surrender. Once ICBC was able to verify the information with the Motor Vehicle Branch, the woman's account was cleared and she was allowed to apply for a B.C. driver's licence.(CS88-233)

Wrong licence number given

A man received a letter from an ICBC adjuster informing him that he was being held responsible for a hit-and-run accident. The adjuster refused to accept his statement that he was not involved in the accident and the man subsequently asked for the Ombudsman's help.

According to the man, a woman claimed she was rear-ended by a small blue domestic car. She gave a licence plate number corresponding to the complainant's vehicle, a large silver car.

When we enquired, ICBC acknowledged that the adjuster had failed to obtain a written statement from the man. After taking his statement, the adjuster reversed the initial decision to hold the man responsible and wrote a letter of apology.(CS88-234)

Thief wrote bouncing cheque

A young man's wallet and cheque book were stolen from his apartment. The thief then used his identification to obtain a bank loan for the purchase of a vehicle. The thief also obtained insurance for this vehicle by writing a cheque from the stolen cheque book. When the cheque was returned to ICBC because of insufficient funds in the bank account, ICBC began collection action against the young man for the full amount.

After an unsuccessful attempt to convince ICBC of the truth of his story, the young man appealed to the Ombudsman.

The police located the thief and charged him with offences relating to impersonation. In spite of this, an ICBC collector maintained that the victim should be held responsible until the alleged thief was convicted. We argued that documents the police had found on the accused at the time of arrest provided sufficient evidence to hold him responsible for the premiums.

As a result, ICBC decided to take collection action against the alleged impersonator and discontinued its action against the young man.(CS88-235)

Living with thief voids insurance

A man's 14-year-old daughter took his car without his permission and damaged it in a collision with another vehicle. The ICBC adjuster promised that the corporation would repair the vehicle without loss of his Claim-Rated Scale Discount if his daughter were charged with theft.

Following the successful conviction of his daughter, however, the complainant was told ICBC would not be responsible for the repairs because his daughter was living with him at the time.

We discussed the matter with ICBC's Public Enquiries Department and the complainant's repair claim was subsequently processed without loss of his discount. The complainant subsequently reported that the adjuster acknowledged his error in promising repairs before thoroughly consulting the regulation. The *Insurance (Motor Vehicle) Act Regulation* states that the corporation is not liable to indemnify an insured person for loss or damage arising out of the theft of a vehicle by a person who resides with the insured.(CS88-236)

ICBC wouldn't believe theft story

A woman arrived home from a party one night and left her purse and her car keys in the vehicle. Since she lived in a rural area, she felt safe in doing so. When her aunt woke her up the next morning to borrow some money, the woman said she told her to take a spare set of keys from the house and get the money from her purse which was in the car. Her aunt returned to announce that her car was gone.

The woman reported the theft to the police who had already found the car demolished in a ditch near the woman's house. The woman submitted a claim to ICBC for the total loss of her vehicle due to theft but ICBC denied the claim because the circumstances were too suspicious and there was no evidence to support the woman's claim that her car had been stolen.

The woman contacted the Ombudsman's office. She told us that her aunt and people at the party would be able to corroborate her statement but that ICBC would not talk to them. We discussed the matter with an ICBC representative who agreed that, without obtaining statements from the woman's witnesses, the investigation into the claim was incomplete.

After speaking with the witness and discussing the matter at length with the woman, ICBC's claim centre manager reversed the adjuster's decision and the claim was accepted as a theft.(CS88-237)

Transfer authorization at issue

A woman came to the Ombudsman's office after her claim for damage to her vehicle was denied because her husband owed a debt to the corporation for Driver Point Premiums (DPP).

The vehicle had once been in her husband's name. Ownership was transferred to the woman's name in 1985. When she tried to make her accident claim, ICBC accused the husband of trying to avoid paying the debt and made her also responsible for it.

The woman told us that the transfer of ownership had taken place with ICBC's authorization and that it was unfair for ICBC to attempt to hold her responsible for her husband's debt. The woman's husband stated that in 1985, the insurance agent had not been able to process the transfer papers without first obtaining ICBC's authorization. He maintained that ICBC authorized the transfer after he paid an agreed amount to settle the existing debt in full. The husband argued that any current debt represented DPP since 1985.

When we enquired, ICBC acknowledged that the transfer could not have been completed without its authorization. However, ICBC staff stated that this authorization had been made on the understanding that the payment was partial and the balance was to follow. We contacted the insurance agent who remembered that an ICBC representative had negotiated with the husband to clear the account before authorizing the transfer.

When we presented this information to ICBC, the woman's claim was immediately processed and collection action against her was suspended.(CS88-238)

Warranty on muffler also insured?

A man's car was stolen. It was recovered sometime later but had been damaged. ICBC agreed to repair the car to its pre-theft condition. However, since it was an older model, ICBC contended the car would be in much better condition after repairs and asked the man to share the cost of the repairs. The man agreed to pay 50 per cent for some of the repairs but they were at an impasse over replacement of the muffler. He contacted our office.

The man said that there was a "lifetime warranty" on the muffler. He argued that, in theory, the muffler had not depreciated in value since he could have had it replaced on warranty at anytime. The ICBC adjuster asserted that the loss of the warranty was not a compensable damage and could not be considered in assessing the muffler's actual value. He insisted the man should pay half.

Unfortunately, the muffler had already been replaced by a repair shop that did not offer a lifetime warranty. The man claimed that ICBC was adding insult to injury. Not only was he losing the lifetime warranty, he was also being asked to pay half for the new muffler.

We were able to convince the adjuster's supervisor that ICBC should pay the full cost of the new muffler if the man could prove that the old muffler had not depreciated in value by producing a copy of the warranty which would have entitled him to a new muffler at any time in the future.(CS88-239)

'Deception' note on file offends

A woman was involved in a motor vehicle accident in 1986. Her claim for injuries was not yet settled in 1988 when her husband was involved in an accident. When the man initiated his bodily injury claim, he was assigned to an adjuster he did not like or trust. Since his wife seemed happy with her previous adjuster, he called his wife's adjuster for advice, but was referred back to the assigned adjuster.

Some time later, the man met with the assigned adjuster. When the adjuster left the interview room to photocopy some documents, the man looked through his claim file and found a note from his wife's adjuster warning that the "man is BAD NEWS, certainly capable of deception. . ."

The man was deeply offended by the note and complained to our office that he would surely not be treated fairly by any ICBC employee with such a note on file.

Upon examining a copy of the note, we concluded that it contained irrelevant and pejorative information. At our request, ICBC agreed immediately to remove the entire note from the file and assured us that it would be brought to the attention of the appropriate personnel manager at head office. At our suggestion, an independent adjusting firm was hired to handle the man's claim file.(CS88-240)

Court delay threat unfair

A woman approaching 80 years of age was hit by a car and required extensive physiotherapy as a result.

ICBC had been paying for physiotherapy treatments and transportation to and from the treatments for the year following the accident when it offered the woman a settlement. The ICBC adjuster informed the woman that nothing further would be paid toward her physiotherapy treatments. The adjuster was also reported to have said that if the woman hired a lawyer, it would take three years to settle and no money would be available in the meantime.

The woman and her family believed that the adjuster's offer was unreasonably low but because they thought the treatments were urgently needed and could not afford the cost themselves, they believed they had no choice but to accept. Her family contacted our office in desperation. They were afraid that their mother might settle the claim because of her immediate situation without consideration for her longer-term needs.

We contacted ICBC and were informed that the adjuster was actually willing to negotiate the settlement amount. We suggested that denial of funds for continuing medical treatment was unfair pressure for the purpose of forcing a quick settlement. At our suggestion, ICBC agreed to continue to provide funds for the woman's treatment throughout the negotiation process.(CS88-241)

Workers' Compensation Board

As reported in last year's annual report, we have streamlined our intake and investigative procedures concerning complaints against the Workers' Compensation Board (WCB). As a result, we have reduced the number of open cases by 20 per cent from the previous year.

In July 1987, the Ombudsman's office completed and issued a public report regarding the Workers' Compensation system in British Columbia. We suggested that a standing advisory council representing all major interested parties be established to report to the Minister of Labour and Consumer Services on major policy issues affecting Workers' Compensation in British Columbia.

In April 1988, the Minister of Labour and Consumer Services appointed an advisory committee comprised of management, labour and government representatives. Its mandate was to examine the current structure of the WCB and provide recommendations to the minister on changes that would ensure the effective participation of employers and workers in the initiation, development and approval of WCB policies, programs and procedures.

In November 1988, the minister released the advisory committee's report containing its unanimous recommendations. The main recommendations were:

- The establishment of an independent 13-member Board of Governors that would be responsible for developing Worker's Compensation Board policy. All appointments would be by Order-in-Council, after consultation with employer and worker representatives.
- The appointment by the Board of Governors of a President and Chief Executive Officer who would be directly accountable to them.
- The appeals role and procedure of the Review Board would remain unchanged.
- The appointment by the Board of Governors of a Chief Appeals Commissioner, with safeguards to ensure quasi-judicial independence for this position. The Chief would in turn appoint appeal commissioners who would decide the same type of appeals considered by the present commissioners.
- Appeals from findings of the Review Board could be initiated by either employers or workers, as is currently the case. However, WCB initiated appeals would be restricted to alleged errors of law or published policy by the Review Board. It is intended that this restriction would reduce the scope for WCB appeals of Review Board findings while at the same time protecting the integrity of the WCB policies and the act.

The minister has instructed officials in his ministry to draft legislation for Cabinet's consideration. It is expected that the legislation will be introduced in 1989. We look forward to meeting and working with the new appointees. We especially would welcome their consideration of the recommendations contained in our Public Report No. 7 which have to date been neither implemented by the Board nor rejected by the Minister of Labour and Consumer Services.

The main focus of our relationship with the WCB during 1988 was that of improving communication and understanding between our offices. Our objective was to focus on and resolve issues of concern as efficiently as possible, in those cases that required the clarification of a decision of the commissioners. After discussion with the commissioners, we agreed to try to achieve our objective through communicating directly with the Director of Appeals Administration. So far, he has proven to be helpful and accessible.

We also communicate on a regular basis with Board staff concerning new complaints received. In early 1988, we met on numberous occasions with small groups of WCB staff in the Compensation Services Division to explain our jurisdiction, the role of the Ombudsman, in what sorts of circumstances we may be contacting them and common complaints and problems we receive. We found that this face-to-face contact and discussion provided those present with a better understanding that we have a common objective: a thorough yet expeditious workers' compensation system. Such understanding can only be of assistance in our ongoing relationship with the Board and indirectly to the public we both serve.

An example of the cooperative approach towards our common objectives was our treatment of the issue of delay and inadequate communication between adjudication staff and claimants. An important objective of the Board is to provide a high level of service to all who require its assistance. Our office had raised concerns with our WCB management liaison person that we were receiving a significant number of complaints where the problem appeared to be one of undue delay in decision-making. Often combined with and exacerbating the delay was the added problem of not keeping the claimant informed about the progress of the claim. This lack of communication caused further frustration, apprehension and unnecessary concern which was sometimes translated into a loss of confidence and trust in the decision-making process. We therefore monitored these complaints over a period of time. The Board, in turn, reviewed the files of these complainants to determine if there was a basis for complaint and, if so, what general steps could be taken to improve the situation.

The Board's analysis determined that, in most cases, delays involved the more complex adjudication matters where some delays are expected. However, the Board agreed to issue a directive concerning "customer service." This directive indicated that while delays may be unavoidable in certain circumstances, appropriate measures should always be taken to ensure that issues are clearly delineated and that investigations or enquiries are carried out expeditiously. It was also stated that claimants and others should be informed of developments and given some expectation of when a decision will be reached. Further, the need to return telephone calls promptly was emphasized. If answers cannot be provided immediately, the caller should be advised of this and provided with an indication of when a response will be available. By improving communications, the Board is attempting to achieve its goal of a high level of service.

It was reported in last year's annual report that we were awaiting a report from the Board of its policy review concerning the question of compensation for allergic sensitivity. We finally received the report, have commented on it formally and have met with the Deputy Minister of Labour and Consumer Services and senior WCB officials concerning the issue. It now seems that this longstanding issue is about to be resolved.

Resolved	157
Not resolved	1
Abandoned, withdrawn, nonjur:	54
Not substantiated	27
Declined, discontinued (referred for appeal)	577
Inquiries	101
Total number of cases closed	917
Number of cases open December 31/88	101

Out-of-province WCB coordination

Cooperation with Ombudsmen in the other provinces can sometimes lead to the resolution of cases involving two jurisdictions.

A worker residing in B.C. sustained an injury in 1983, for which he received wage loss benefits. At the time of the pension assessment, however, the Workers' Compensation Board of B.C. determined that any ongoing problems were related to a 1963 work-related injury in Alberta. The Workers' Compensation Board in Alberta later paid the man a small monthly pension. Through the Office of the Ombudsman in Alberta, the worker was able to obtain a lump sum from the Alberta WCB. Our management liaison with the WCB in B.C. led to the worker receiving assistance from the Board, on the basis of an earlier injury claim, to set up a small machine shop for establishing a woodcarving business.(CS88-243)

Added info brings new hearing

On the morning of his appeal before the Workers' Compensation Review Board, a man had an attack of food poisoning. He telephoned the hotel where his union representative was staying and left a message that he would be unable to attend. When he failed to appear at the hearing that afternoon his appeal was treated as abandoned.

The man contacted the Review Board to reinstate his appeal but was turned down on two occasions. The reasons for the denial were that neither the union representative nor a hotel clerk remembered receiving the complainant's call. The man then contacted the Ombudsman's office.

We found that the hotel clerk did not remember receiving the telephone call for good reason - she was not working on that day. The clerk who was working not only remembered receiving the telephone call in question but remembered handing the message to the union representative.

As a result of this new information, the Review Board granted the complainant a new hearing.(CS88-244)

Lack of information same as appeal denial

In September 1984, the Ombudsman's office initiated an investigation into the Board's practice of not advising workers of their appeal rights in cases where the Disability Awards Department had awarded a pension. We were concerned that this refusal to provide appeal information had effectively deprived workers of their right to appeal. Workers who were dissatisfied with the amount of the pension or the percentage of disability often found they were out of time to appeal once they had discovered that the decision was appealable.

In April 1988, after almost four years of correspondence, the Board accepted our recommendation. The Board's present practice of advising workers of their appeal rights when benefits are denied, terminated, or reduced, will be extended to all appealable decisions involving permanent partial disability pensions. This action resolved the problem.(CS88-245)

Need for implementation request discriminates

In March 1988, the Supreme Court of B.C. ruled in *Guadagni v. Workers' Compensation Board of B.C.* that the Board's discretion under section 96(2) of the *Workers Compensation Act*, to "reconsider" a Review Board finding, is subject to the express statutory obligation on the Board under Section 92 of the act to implement a finding of the Review Board without delay. This meant that until the Board reversed a finding of the Review Board under Section 96(2), it is obliged to implement the finding of the Review Board.

In April 1988, we learned that the Board was following the *Guadagni* decision with respect to all Review Board findings referred to the commissioners under Section 96(2) and awaiting determination. However, we also learned that those Review Board findings which were reversed by the Board pursuant to Section 96(2) **prior** to the *Guadagni* decision would only be implemented upon request. Those who did not know about the decision and did not request implementation of Review Board findings would not receive it.

We were concerned that the Board's policy would result in unfair treatment of a category of claimants. Although the *Guadagni* decision would apply equally to all claimants whose Review Board findings were overturned by the Board under Section 96(2), the Board's policy had the effect of creating two classes of claimants: those who know of the *Guadagni* decision and those who do not know. We felt that a claimant's lack of knowledge of legal developments should not be a basis for determining whether he or she receives benefits.

The Board responded to our enquiries by informing us that it was agreeing to identify all claims on which Review Board findings were reversed by the commissioners pursuant to Section 96(2) and to implement those findings in accordance with the *Guadagni* decision. This response satisfied our concerns.(CS88-246)

More tests ordered after enquiries

A worker's wife contacted us after her husband had received a decision letter stating that no pension would be awarded following a head injury he sustained in 1982. The worker's wife claimed that hearing loss and epileptic seizures had resulted from the injury.

A decision had been made in 1987 to deny a relationship between the seizures and the head injury. However, we reviewed the Workers' Compensation Board claims file and noted that subsequent to the decision to deny the seizures, two Board doctors had recommended that there be further neurological assessments of the worker. The claims adjudicator consulted with the area medical advisor who did not agree that these examinations be initiated. We contacted our management liaison with the board who agreed that more extensive neurological examinations should take place to determine the cause of the epilepsy and any other disability which could be attributed to the head injury.(CS88-247)

Phoning medical evidence not enough

A worker complained to our office concerning an adjudicator's decision to deny his claim for a hernia as work-related. He did not realize until almost a year later that the denial had resulted in his employer deducting 20 days of his vacation time. Once he realized this, he was well beyond the time to appeal the adjudicator's decision.

In a belated attempt to deal with the matter, the worker telephoned the unit manager for a review. The worker had obtained a supportive letter from his doctor, requesting the Board to reassess his claim. The doctor, who had examined the worker a few days after his lifting incident at work, stated that the worker had developed a painful swelling over the next day or two. This information appeared to differ from that relied on by the claims adjudicator.

The unit manager decided that no new evidence had been submitted that would warrant reconsideration of the claims adjudicator's decision. However, the doctor's report was only discussed over the telephone rather than submitted for consideration.

The worker then attempted to appeal the adjudicator's decision to the Review Board. However, the Review Board would not grant an extension of time for the worker to appeal the claims adjudicator's decision, nor did they find that the manager's review was a new decision with new appeal rights.

The worker then complained to our office. We brought the problem to the attention of our WCB management liaison. We were concerned that the new medical evidence was only discussed over the telephone and never submitted to the Board and yet a reconsideration was denied on the basis that no new evidence had been submitted. We felt that a meeting would have given the worker a better opportunity to submit the new medical evidence. We forwarded the new medical evidence to the Board. The manager subsequently met with the worker, had witnesses interviewed, and obtained another opinion from the Board's Medical Advisor. As a result of this further review, the Board decided to accept the worker's claim.(CS88-248)

Timing of immigration important

A worker who had immigrated to Canada enquired about the rate used by the Workers' Compensation Board to calculate his compensation payments. He told us that he had lost his Review Board appeal, and was not considered to be a recent immigrant, which would have entitled him to receive a class average for his rate of compensation.

When we examined the Review Board decision, we found that it had, in fact, qualified him as a recent immigrant. The adjudicator, however, had written to the worker and stated that he could not be considered a recent immigrant. When this error was identified, the Workers' Compensation Board implemented the Review Board finding, and recalculated the worker's wage rate in line with the class average for his field.(CS88-249)

Employer irked by lack of explanation

An employer complained that the lack of a prompt explanation of an assessment charge led to his frustration and added interest charges on a debt.

In 1986, the employer received a bill for assessments the Workers' Compensation Board declared owing for 1985. The employer disputed the amount and wrote several times to request an explanation. Although he received responses to his letters, his questions remained unanswered. On that basis, he refused to pay the bill, and interest and penalties accrued on the debt.

Finally, still dissatisfied with telephone conversations with the Workers' Compensation Board, he hired a lawyer who looked into the matter and explained to his client that the Workers' Compensation Board had correctly applied its policy. The employer then agreed to pay the amount in question but he brought the matter to our attention.

We took this matter to the Director of Assessments, who acknowledged that the employer had not received direct and prompt replies to his letters. The Board therefore initiated a change in procedures to ensure that the problem does not arise in future.(CS88-250)

Appeal denials reversed

A man complained that the Workers' Compensation Board had denied his claim for PCB poisoning. He had unsuccessfully appealed this decision to the Review Board and then to the commissioners of the WCB.

The commissioners had not only refused to accept that the man's symptoms were related to PCB poisoning, but also concluded that his claim was substantially barred by the time limitations set out in section 55 of the *Workers Compensation Act.* This section requires that a worker file a claim for compensation within one year of the date of an injury or the date of disablement from industrial disease, unless "special circumstances" precluded such an application.

The man then attempted to appeal to a Medical Review Panel but his application was denied because even if the Panel found in his favour, the claim remained barred by statute. The man asked the commissioners to reconsider, but they upheld their earlier decision regarding the time limit. The commissioners concluded that since the man suffered periods of temporary disability related to his condition as early as 1971, his claim (filed in September 1977) was considerably beyond the one year time limit set out in the act. They further concluded that since there was evidence that the man knew there was some relation between his symptoms and his work, there were no special circumstances precluding his filing. The man argued that neither he, nor his physicians, knew of the possible PCB connection until September 1977, at which time he immediately applied for compensation.

Following our preliminary report and recommendations, the commissioners reconsidered the man's claim and found that it was only partially statute barred, precluding payment for any periods of temporary disability prior to September 1976. If accepted, the man's claim could result in compensation for any periods of temporary disability within one year prior to the date of his application and thereafter, including any permanent disability.

Since the claim was no longer "statute barred" the man's application for a Medical Review Panel was now free to proceed on the complex issue of his medical diagnosis. We considered this to have resolved the man's complaint.(CS88-251)

Retroactive benefits obtained

A worker's representative complained that a worker had a right to benefits between May 1986, when the Board had declared his ankle problem had stabilized, to the date of his surgery in December 1986. A Workers' Compensation Review Board had denied an extension of time to appeal the decision to deny benefits for this period of time.

Following the termination of wage loss benefits in May 1986, the worker had returned to Alberta. He attempted to work but was unable to perform his job. His specialist requested authorization from the WCB to perform surgery in September 1986 but did not receive a reply until December 1986. In the meantime, the Disability Awards Department of the WCB deferred a decision to assess the worker for a pension. Following the surgery, the worker's file had not been referred back to the Disability Award Department for the pension assessment.

We contacted the Assistant Director of Claims at the WCB about these issues and as a result of our discussions, the worker will now receive retroactive benefits and will be assessed for a permanent partial disability award.(CS88-252)

Enquiry brings pension reassessment

A worker injured his back at work in 1979. Wage loss benefits were paid for two months. The claim was reopened in 1981. However, no pension assessment was made.

In 1988, the worker was finding it difficult to continue working in logging because of his back problems. He contacted our office to complain that he had received no further benefits from the WCB. We reviewed the file and referred the issue of the pension assessment to our management liaison at the WCB. As a result, the worker now receives a pension of 2.5 per cent of total disability between 1979 and 1981 and five per cent for the period up to the present. His award was paid retroactively with interest.(CS88-253)

Rules for doctors on panel enforced

A worker complained about the decision of a Medical Review Panel and about the fact that two of the doctors who sat on the Panel worked out of the same office.

Section 59(1) of the *Workers' Compensation Act* states that "there shall not be on the same panel specialists who are partners or who practise medicine together".

We brought this matter to the attention of the commissioners, who agreed that since the doctors had an economic arrangement and shared office space, they were precluded from presiding on the same panel. There was no question of the integrity of the doctors involved. The error had been made in the administration of the panel selection. The certificate of the panel related to this worker was therefore declared void. A new panel was to be constituted and a new decision in the case will be forthcoming.(CS88-254)

After 43 years, damage recognized

In 1945, a young man was severely injured when he was struck by a tree he was cutting. He suffered permanent damage to his leg, eyes, ears, and head. The Workers' Compensation Board compensated him though not for the cerebral damage. He contested the decision. Eventually in 1957 a Medical Review Panel reviewed the matter. It referred to his "possible cerebral damage" but in the binding portion of the certificate, no mention of this damage was made. The Workers' Compensation Board concluded that, as no mention of cerebral damage was made in the certificate, this could only be due to the panel's belief that there was no damage. Accordingly, there was no pension issued for cerebral damage.

Throughout the 1960s, 70s, and 80s, the worker continued in his attempts to get a pension for this unrecognized impairment. In 1982, the Board recognized the impairment as a disability but only retroactive to 1973. Eventually, he contacted our office.

We recommended to the Workers' Compensation Board that it pay him a pension back to 1947 - the date at which his injury stabilized. The Workers' Compensation Board refused but eventually agreed to refer the worker to a second Medical Review Panel. The conclusion of the 1986 panel was that the worker should be pensioned back to 1947. The Workers' Compensation Board refused to do this, arguing that it could only pay back to 1957 because of the previous binding decision of the first panel.

We took the position that the first panel did not deny cerebral damage but that the WCB inferred from the panel's silence on the issue that it considered that there was no such damage. Though the WCB cannot change the decisions of medical review panels, it can reconsider its own decisions and we asked it to do so in this case. The entire Board of Commissioners met and decided that it was appropriate to pay the pension back to 1947. Forty-three years after the accident, just before Christmas 1988, the injured worker received a sizeable pension cheque from the Workers' Compensation Board.(CS88-255)

Unsolicited information on workers' files

Our office has received several complaints concerning the inclusion of unsolicited information on workers' files. As a result of our proposals, the Board has developed a policy to deal with anonymous information. Where such a communication is deemed not relevant to the claim, it will be destroyed immediately. All other anonymous information will be investigated. The investigation report will be included in the claim file only when the anonymous information has been found to be accurate and relevant to the administration of the claim. In these cases, the Board will give claimants the opportunity to comment on the information. The Board is currently developing a policy concerning unsolicited information from an identified source.(CS88-256)

A question of deadlines

A sawmill worker developed a temporarily disabling muscular pain in his shoulder after engaging in repetitive heavy pulling at work. Over the previous several years, this worker had suffered moderate pain and injury to his shoulder whenever he had been doing heavy pulling. For a three-year period when he did not do repetitive pulling, his shoulder was symptom free. On the date of disablement, the worker was performing the pulling type of work which had always brought on shoulder pain, so he reasoned that his condition was aggravated by his work or else he had injured himself that day. He applied for compensation.

His application for compensation was denied. The Board asserted that the worker was performing regular work functions and had had shoulder problems in the past. Therefore, the Board held, the employment was not likely the significant cause but rather a chronic condition was the more likely cause of his disability. The

Board declined to determine if the chronic condition was work-related because it contended that it was barred by the *Workers Compensation Act* from considering a condition for any period beyond one year preceding the date of application.

The Board has a policy under which it will consider the date of disablement after a series of minor injuries or repeated trauma to be the operative date from which the time-limit will run, rather than the date of the first incident. Since this worker applied soon after the date he became disabled, his application would have been on time under this policy. However, the Board refused to apply this policy, claiming his current disablement was due to "apparent exacerbations from distinct physical causes," long before the date of disablement and before the allowable time limit.

It was our view that the Board had and should have exercised the authority to adjudicate this claim to include the entire period of the shoulder condition under the repeated minor trauma policy mentioned above. Alternatively, the commissioners could have accepted the entire claim under their statutory authority to waive the one-year time-limit whenever they find special circumstances which preclude filing an application within one year. However, the Board maintains such a very strict interpretation of this provision that it is very rarely used. The commissioners finally agreed with one of our suggestions that, having recognized the chronic shoulder problem which the evidence showed was at least exacerbated by repetitive pulling, the claim should be accepted on an aggravation basis at least. The worker had his claim accepted on an aggravation basis and was paid retroactive wage loss benefits.(CS88-257)

Benefit of doubt granted

In 1983, a self-employed man who wished to have the benefit of WCB coverage applied to the Board for Personal Optional Protection. His application was accepted and he started receiving assessment billings. Later, he cancelled his coverage but continued to be billed despite several letters to the Board requesting cancellation. He decided to ignore the billings but then learned that the Board had registered a lien against some of his property to secure $820 for unpaid assessments. He then complained to the Ombudsman.

When we contacted the WCB, staff were unable to turn up any of the man's correspondence but agreed to give him the benefit of the doubt and cancelled the lien, the debt and the coverage.(CS88-258)

Legislation of the day key to case

A worker employed as a heavy-duty mechanic was injured in 1967 when struck in the low back by a moving forklift. He was off work frequently thereafter due to his lower back injury and in 1971 he was assessed for a permanent partial disability pension. He was awarded a pension of 15 per cent of total disability but because he suffered from pre-existing disc degeneration, the Board applied a 'proportionate entitlement' factor of 50 per cent to his claim, reducing his actual pension to 7.5 per cent.

In the years following his accident, the worker underwent a number of surgical and medical procedures on his spine. In 1980, his pension entitlement was reassessed and, in 1982, it was increased to 20 per cent of total disability. Proportionate entitlement was not applied to the five per cent increase, making the worker's actual pension 12.5 per cent of total. The worker complained to the Ombudsman that "proportionate entitlement" should not have been applied to his original claim.

During our investigation, we formed the opinion that the Board had erred in applying the proportionate entitlement provision of the *Workers Compensation Act* in effect at the time of the injury in 1967 rather than the provision in effect when the pension was assessed in 1971. The legislation in effect in 1967 provided for proportionate entitlement to be applied where the work injury "activates" a pre-existing disease or condition. In 1971, 'proportionate entitlement' was to be applied only where a worker's pre-existing condition amounted to a "disability". There did not appear to be any evidence in this case that the worker's pre-existing disc degeneration amounted to a disability.

We wrote in January 1988 to the commissioners, proposing that the Board reconsider its decision to apply proportionate entitlement to the 1971 calculation of the worker's permanent partial disability pension. The commissioners agreed that the Board should have applied the legislation in effect at the time of the pension assessment rather than at the time of the injury and further agreed that the evidence did not support a finding that the worker had a pre-existing disability at the time of his injury. Our proposal was accepted in September 1988 and the worker's pension was reassessed accordingly in October 1988. He received a large retroactive payment and his monthly pension entitlement was substantially increased.(CS88-259)

Was car accident in course of work?

A worker employed by a logging contractor was injured while driving his own vehicle from his work site back to his place of residence. Normally, he got a ride to the work site with one of the logging trucks belonging to the contractor and went to work two hours earlier than the rest of his crew to unload the first logging truck.

On the day in question, the usual situation did not prevail. The previous evening, his employer advised him not to attend early at the work site and to take the crew bus to the work site with the rest of the crew. The logging truck driver that normally picked him up was notified the worker would not need to be picked up. Later, however, the employer's plans changed and he asked the worker to go to the work site as usual. The employer failed to notify the driver of the logging truck of the latest change in plans and the worker was unable to get his ride in the usual way. He decided to drive his own vehicle to the work site in order to fulfill his responsibility to arrive at the scheduled time to unload the truck.

Returning home at the end of his shift, the worker was involved in a single-vehicle accident in which he was injured. He claimed compensation. His claim was denied on the grounds that he was not within the course of his employment while driving his own vehicle. The commissioners were of the view that at the time of his injury, the worker was routinely commuting to work and so his injury would not be considered to have arisen out of and in the course of employment. The worker complained to the Ombudsman.

We contacted the worker's employer. He supported the worker's claim and told us that a worker was required to use his own vehicle to get to work only in unusual circumstances and that when such circumstances arose, it was the employer's practice to reimburse the employee for travel expenses. He confirmed that the worker, in this case, was entitled to reimbursement.

We provided this information to the commissioners and pointed out, as well,those factors which made it appear that the worker had not been engaged in "routine commuting" at the time of his injury. The commissioners reconsidered the matter in this light and agreed to accept the worker's claim.(CS88-260)

A tale of two WCB systems

Occasionally, we receive a complaint from a worker who has fallen between the cracks of the compensation systems of two separate provinces. The result is a bureaucratic nightmare requiring some practical remedy beyond appeal structures.

A worker injured his back in 1963 in Quebec. He had surgery and received a five per cent Workers' Compensation Board pension award for that injury. In 1975, he had an injury in British Columbia to the same area of his spine. He underwent a second operation and the B.C. Workers' Compensation Board later awarded a pension on the basis that the second injury had permanently aggravated the pre-existing disability related to his accident in Quebec.

In 1983, having increased difficulty with his back, the worker applied for a reassessment of his pension in both provinces. The Workers' Compensation Boards of both Quebec and B.C. attributed the increased disability to the accident in the other province. A Workers' Compensation Review Board in B.C. upheld the denial of further benefits by B.C. His request for an extension of time to appeal to the commissioners was denied. His appeals in Quebec were equally unsuccessful, though he was still awaiting an appeal decision from Quebec as he underwent a third operation.

The involvement of our office was limited by the fact the worker had an appeal in progress. However, we assisted him in getting another medical opinion from a specialist in B.C. The specialist attributed 50 per cent of the increased disability to each injury. Initially, this was not considered by the B.C. Board to be sufficient to alter previous decisions or to grant a further appeal right in B.C. However, following our discussions and his own contact with the worker, a senior manager at the Board presented the circumstances to the commissioners. They agreed that the opinion of the B.C. specialist represented new medical information. After considering this new information, the B.C. Board has now accepted that the 1975 injury contributed to the recent deterioration of his back disability. The Board agreed to pay some wage loss, assess him for a pension and negotiate with its Quebec counterpart to split the cost evenly between them as the new medical evidence suggested.

Cases such as this indicate the need for a mechanism among provincial WCB's to work out a compromise or agree to an outside impartial opinion in order to prevent such delays and difficulties.(CS88-261)

Criminal Injury Compensation Board

Procedures needed to review treatment

The Criminal Injury Compensation program is administered by the Workers' Compensation Board. The *Criminal Injury Compensation Act* sets out provision for the provincial government to pay "compensation, within certain limits, for personal injury or death that results from a crime. . ."

For child victims of physical or sexual abuse, compensation is often provided through payment to psychologists, social workers or other child and youth care professionals for the provision of assessment and treatment services.

In August 1987, we received a complaint from a counsellor in private practice who specialized in providing art therapy to child victims of abuse who were often too young to benefit from the traditional forms of "talk therapy". She said that she had not received full payment for art therapy sessions provided to her clients, all of them victims of abuse with valid claim numbers. The complainant stated that the bills that she submitted to the Board were "retroactively reduced" without explanation. The amount in question was $8,460.

When we reviewed correspondence between the WCB and the complainant, it was apparent that the type of therapy being provided and the length of sessions billed for (usually 2 to 3 hours) were questioned by WCB staff. After receiving a letter from the Board's solicitor, the complainant said that she had adjusted the length of her sessions to one hour but expressed concern that this was inadequate time to work with young children in non-verbal modes of therapy. She said that the traditional "50-minute hour" of talk therapy was inappropriate for art therapy.

Following discussions with the WCB solicitor, the Board agreed to assume responsibility for the initial billings submitted by the complainant to the amount of $8,460, thus resolving that issue.

Subsequently, and on our own initiative, we expressed our concerns to Board personnel about the apparent lack of procedures to review and monitor clinical treatment services provided by counsellors and funded under the authority of the *Criminal Injury Compensation Act.*

The significant increase in the utilization of Criminal Injury Compensation funds for the provision of treatment to child victims of abuse indicates the important role of this program in the broad area of children's mental health. Consequently, we have met with the Board solicitor and the Director of Children's Mental Health (Ministry of Health) to discuss issues that include:

1. Clinical Review Procedures: When the Board raises administrative questions about the appropriateness of treatment services being provided, we have suggested that a procedure for clinical consultation and review may be useful.
2. Quality Control: Outside of the established professions, there is minimal regulation of private counsellors practicing in B.C. Anyone can establish themselves in a private counselling practice and provide "therapy" to clients without legislated or regulatory accountability. The onus rests with parents or guardians to choose wisely when their children are in need of treatment, even though they may not be well-equipped to assess clinical competence. We have suggested that mechanisms be explored between the Board and Mental Health Services of the Ministry of Health to ensure the availability of professional (clinical) consultation especially in cases where the therapist or counsellor is not a member of an established and accountable professional body.
3. Case Management: The need for effective case management in responding to the needs of child abuse victims is well-acknowledged. In many cases, children are referred to the Criminal Injury Compensation program by Ministry of Social Services and Housing social workers, Ministry of Solicitor General probation officers, or police. Professionals who operate in isolation from other involved professionals in child abuse cases are not operating in an effective or efficient manner. Case management linkages between Board-funded private therapists and other ministry professionals are required.

The concerns indicated above have been raised by us with personnel from the appropriate authority and we anticipate a continued dialogue on these matters in the coming year.(CS88-262)

Non-Jurisdictional

The Ombudsman is frequently contacted with requests for assistance that involve agencies that do not fall under the jurisdiction of our office. Still, we are able to provide referral information, directing people to the appropriate agencies, and sometimes to assist informally in achieving a resolution.

A large number of the calls involve landlord-tenant disputes, consumer transactions, municipal, regional and federal governments and various financial institutions.

People experiencing difficulties with a landlord or tenant can call the Residential Tenancy Branch for a copy of the *Residential Tenancy Act* which outlines the rights and responsibilities of both.

We receive many calls from dissatisfied consumers about a product, a service or the legitimacy of a business. Generally, we refer these callers to either the Better Business Bureau or to Small Claims Court.

As we do not give out legal advice; we refer calls regarding legal matters to a Legal Aid office, the Lawyer Referral Service or Dail-A-Law, or we suggest the complainant contact a private lawyer.

The following are examples of complaints that fall outside the Ombudsman's jurisdiction where we have been able to provide some assistance to individuals who may have tried all other resources.

Soccer injuries concern to parents

This office was presented with a unique opportunity to assist in the resolution of a youth-related issue outside the bounds of provincial government operations.

We were approached by the British Columbia Soccer Association (BCSA) and invited to lend some outside investigative expertise to a special committee which was about to consider allegations that the coaches of a young girls' soccer team had been encouraging an overly-aggressive style of play which had resulted in an excessive number of injuries to players of other teams.

A concerned parent of a daughter who played on one of those other teams had initially sought a court injunction to prohibit the involvement of the coaches in question but the court had wisely referred the issue to the soccer association. The parties then agreed to abide by the findings of the special investigative committee.

A senior member of the Ombudsman's investigative staff who had extensive coaching and soccer administration experience was nominated to serve with three other individuals from the B.C. soccer community on the special committee. The committee conducted interviews with several persons and sent questionnaires to players, coaches and officials involved in the situation. The work of the committee was distilled into a 10-page report which was presented to the BCSA March 31, 1988.

The principle finding of the report was that the coaches in question had at no time advised their players to cause injury to other players. Injuries had occurred but there was no evidence that these were anything other than the unfortunate by-product of intense and fast-paced sports action. However, because the committee's mandate included investigating and commenting on any facet of the game which would explain the number of injuries and on any means of lessening their frequency, the committee included a number of broader recommendations which went beyond considering the play of one team alone. The recommendations were:

1. Where patterns of play-behaviour appear to be causing problems, coaches should accept responsibility for identifying alternate patterns of behaviour or instructing players in compensatory skills.
2. Clubs should consider the establishment of an Ombudsman-like position to deal with complicated issues not always readily addressed by executive members.
3. Clubs should strive to ensure the democratic ideal of one member-one vote.
4. As a matter of policy, clubs should ensure the periodic turnover of key executive positions.
5. Each youth player at a divisional level should wear a number on his or her jersey for field identification purposes.
6. Youth referees should complete a report on each game officiated.

The B.C. Soccer Association considered the recommendations at a meeting of its board of directors and subsequently publicized the findings to soccer officials throughout the province. We understand the association has since embarked upon a concerted effort to involve youth affiliates in the International Football Association's "fair-play" program and to develop coaching models consistent with that undertaking.

Village tendering practice felt unfair

A man complained to the Ombudsman that a village was being unfair in its tendering practices relating to a contract for construction of an airstrip.

Provincial monies were being used to fund the airstrip construction. The complainant objected to the size of the required letter of credit - 50 per cent of the bid - and the performance bond - 10 per cent of the contract amount. The complainant also objected to the fact that although he was not allowed an extension of time in which to prepare a proper bid, the opening of the tenders was nonetheless delayed four hours so that other bids could arrive from another community where an aircraft which would carry the bids had been delayed by fog.

Upon investigation, we found that tendering practices in this instance were controlled entirely by the village. The office of the Ombudsman was therefore, strictly speaking, without jurisdiction. However, inquiries were made by this office to determine whether there was a tangent of jurisdiction because provincial funds were being used to finance the contract for construction of the airstrip. Response to these initial inquiries was courteous and comprehensive, and illustrates the cooperative manner in which authorities which are otherwise non-jurisdictional have dealt with this office. The response also enabled this office to determine that even if the complaint had been within the Ombudsman's jurisdiction, it would have nonetheless been unsubstantiated. The tendering practices were essentially fair and the allegation of late bids turned out to be unfounded. All tenders had, in fact, been received on time but certain letters of credit which were essential components of a tender had been delayed by financial institutions. Although the complainant found it difficult as a small contractor to satisfy the requirements set by the village, there was nothing in the tendering process which could be characterized as administratively unfair.(CS88-263)

Help in tracking father

A young lady, still a minor, was living in a small community in Ontario and had lost touch with her father for several years. She knew that he had lived in Vancouver and Victoria and indicated he may have been involved with the judicial system, specifically Corrections, but had little other information about him when she contacted the Ombudsman's office for help.

We contacted various provincial government departments, including the Corrections Branch and the Motor Vehicle Branch. The Motor Vehicle Branch and the Ministry of Social Services and Housing agreed to forward a letter from the daughter to her father, if she chose to write one and if they had an up-to-date address on file. This information was passed on to the daughter and enabled her to try to reach the father. While safeguarding the father's privacy and giving him the choice of contacting his daughter or not, the ministries involved assisted us in getting the family back together.(CS88-264)

Halls of higher learning a labyrinth

A distraught would-be student outlined by telephone a history of mislaid applications and misunderstanding in her efforts to register at a British Columbia university.

She claimed her first application for the January 1988 semester had been forgotten, left on someone's desk. She was then accepted for the summer session but decided to wait for the fall. When anticipated informational material did not arrive in August, she telephoned the institution and discovered that, contrary to what she had believed, she was not registered. She was advised that it would be better to apply for the January 1989 session. Her distress was magnified by the fact that she had signed up for part-time work with her employer and it was too late to switch to full-time employment, which she would have done had she not believed she was scheduled to begin attending classes. She believed that she had done "everything they told me and they goofed up".

We suggested that she set out her story in writing exactly as she had told it to us and send it to the president of the university. We learned a few weeks later that she had been accepted for the fall term.(CS88-265)

Helping parents make contact

The parents of a mentally ill woman called us from their home in Toronto. They were concerned about their daughter who lived in B.C. because they had been unable to reach her by phone. They did not know anyone else in B.C. so they called us.

We called the public health nurse for the area where the daughter lived. The nurse was aware of the situation and assured us that the daughter was receiving medical and psychiatric services. The nurse agreed to let the woman know that her parents were concerned about her. In addition, we were able to give the parents the name of the nurse who agreed to be their future contact.(CS88-267)

Hurricane causes distress here

While the effects of the hurricane in Jamacia seemed far away, there were Canadians in Jamacia at the time. One very distraught B.C. mother called us as a last resort. Her daughter was in Jamacia, due to come home two days before the hurricane hit. The mother had not heard from her daughter and was concerned that she was stranded in Jamacia somewhere. She had not been able to get any information from officials about evacuation procedures.

We contacted a number of government agencies and could obtain no information. Finally, we contacted Air Canada, since they had announced departures from Jamacian airports, contrary to news reports that the airports were closed down. The airline was not able to confirm that this lady's daughter was scheduled on an immediate flight but they confirmed that the airports were open and that Canadians were being bused from communities to the airport. The mother was able to keep in touch with Air Canada which was to advise her as soon as her daughter had reservations.(CS88-268)

Hole in roof invites racoons

An elderly lady contacted us with an unusual problem. She lived on her own, except for a family of racoons that had taken up residence in her attic. She complained originally that local officials had come in to deal with the problem and had left a large hole in her roof.

After making some enquiries, we learned that someone had offered free help, due to the woman's limited resources, but this was not under any municipal or provincial jurisdiction. The lady's house was very close to a few large trees, which the racoons used to get to the house through an existing hole in the roof. The concerned citizen had attempted to set a trap but it failed as did attempts by local exterminators.

With the help of the local health officials, we convinced the complainant that the solution to her problem was to have the trees cut to limit the racoons access and to have the roof repaired.(CS88-269)

Saskatchewan jail concerns B.C. mother

A mother was very concerned about her daughter who was an inmate in a correctional facility in Saskatchewan. The daughter was serving a sentence for stealing a car. On two occasions, the daughter had been given day passes, but failed to return to the facility. As a result, her sentence was increased. The mother was concerned that the facility was, in a sense, setting her daughter up for failure by giving her day passes. The mother was also very concerned about her daughter's safety because she sounded very distraught when the mother had spoken to her. We contacted the Saskatchewan Office of the Ombudsman. They agreed to notify the institution of the mother's concerns and sent an investigator to the institution to talk with the girl in more detail.(CS88-270)

Banking concern a matter of interest only

A lady called us on behalf of her father, a senior citizen. Apparently, he had been notified by his bank that they had made an error and had been paying him the wrong amount of interest for the past three years. He was informed that the bank would be debiting his account $1000. Because he was on a pension, the father became quite upset.

It appeared that the bank had been paying interest on someone else's term deposit. We explained to the woman that it may be correct for the bank to debit her father's account in this situation but referred her to the federal office of the Superintendent of Financial Institutions to have the matter clarified.(CS88-271)

Pension enquiries made

We received a call from a man whose mother had not received her old age pension cheque for the previous few months. We advised the caller that we did not have any authority to investigate a federal government department, but we agreed to make some enquires. We called Old Age Security Programs and we were able to advise the caller later that a cheque would be mailed out within 10 days.(CS88-272)

Bear facts explain cut tree

A man discovered that a tree on his property had been cut down while he was away. He was informed by a neighbour that in his absence a bear had climbed the tree and the police were contacted. The bear was shot but it still remained in the tree so the police officer decided to cut down the tree. The man contacted the Ombudsman's office to complain. We suggested that he contact the sergeant at the local RCMP detachment to seek compensation and contact us again if he was not satisifed. We did not hear back from him.(CS88-273)

Credit reporting concern referred to Registrar

On a number of occassions, we have been contacted by individuals with complaints about the practices of credit reporting agencies. We refer these complainants to the Registrar for credit reporting companies.

One complainant contacted us when he discovered that a credit reporting company had registered an unpaid debt on his file which was not his but which had been incurred by someone with the same last name. We advised him that the registrar would have the authority to investigate this credit reporting agency's administrative practices to determine if they were in compliance with the provisions as set out in the *Credit Reporting Act*. In particular, the act sets out the guidelines agencies must adhere to regarding the accuracy of credit information, the consumer's right to access their record and the manner in which an agency should disclose credit information. The complainant subsequently took this matter up with the Registrar.(CS88-274)

Complaints about lawyers

Our office often receives complaints about lawyers, especially in those cases where the court has ruled against an individual. Unfortunately, the adversarial nature of our justice system does not often achieve outcomes where opposing parties will both be satisfied with a judge's ruling. Frustrations may then be directed towards the representing lawyer. However, there are times when lawyers' actions or conduct should be reviewed and, in these situations, we refer individuals to the Law Society of British Columbia. Our jurisdiction does not extend to the Law Society but we do have an informal relationship which allows us to make enquiries with respect to the status of a Law Society investigation and to review its complaint handling process. With regard to general complaints about the justice system, we referred people to the B.C. Justice Reform Committee set up by the Minister of Attorney General. The committee deliberated during 1988 to consider some of the areas where our justice system could be improved. Among other things, the committee looked closely at and reported on barriers to justice in the civil litigation process and alternatives to the court system for resolving disputes. The committee has completed its work and published its report. Legislation will be introduced in 1989 to implement some of the committee's recommendations.(CS88-275)

Enquiries made for car buyer

A young lady called us after she felt she had been dealt with unfairly by a car dealership in her area. A vehicle was sold to her as a demonstration model. She paid an additional $490 for an extended warranty. The car was in constant need of repair due to problems caused from an accident prior to her purchase but the money she had paid to the dealership for the warranty was never sent to the warranty company and the company had gone into receivership.

This was this woman's first major purchase and she had no idea what to do, so we made enquiries for her. We learned from the warranty company that she did not have a warranty and there was nothing they could do. A number of creditors were in line to try to recover losses from the dealership and the chances of her getting any money appeared slim. We called the manager of the auto manufacturer's Canadian office. He had already heard similar tales from customers of this particular dealership. The manager advised us that the new owners of the dealership had agreed to go out of their way to resolve outstanding complaints. He assured us that this woman's situation would be dealt with and resolved.(CS88-276)

Mother worried about 44-year-old son

An elderly lady came into our office looking for information that would be of assistance to her son. As a mother, she was very concerned about her son's ability to care for himself. At 44 years of age, he had been suffering from emotional and physical problems which were limiting his ability to take full responsibility for his financial affairs and general well-being. While his behaviour did not seem to warrant a drastic measure such as institutionalization, the mother's own failing health was making it difficult for her to look after her son. The son was unwilling to make any moves to obtain financial assistance from the government. We called the local office of the Ministry of Social Services and Housing and explained the situation. The ministry agreed to make arrangements for a worker to go to the man's home and assess his financial status. We felt that once a worker could establish a relationship with the man, the mother's worry would be alleviated.(CS88-277)

Part III

Statistics

TABLE 1

Profile of Jurisdictional Complainants and Complaints Closed Between January 1, 1988 and December 31, 1988

	Number	Percent
Mode of First Contact		
Aggrieved Party	6,597	92.4
Relative/Friend	490	6.9
MLA and MP	12	.2
Other	44	.5
TOTAL	7,143	100.0

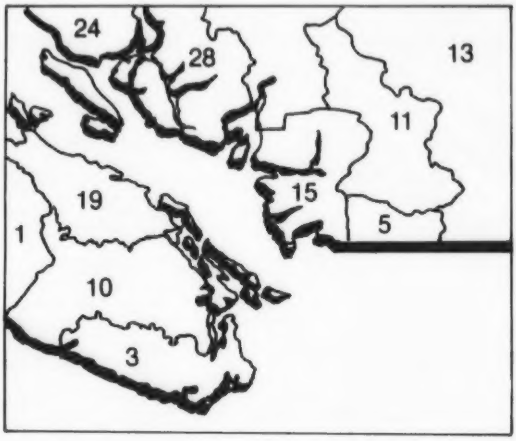
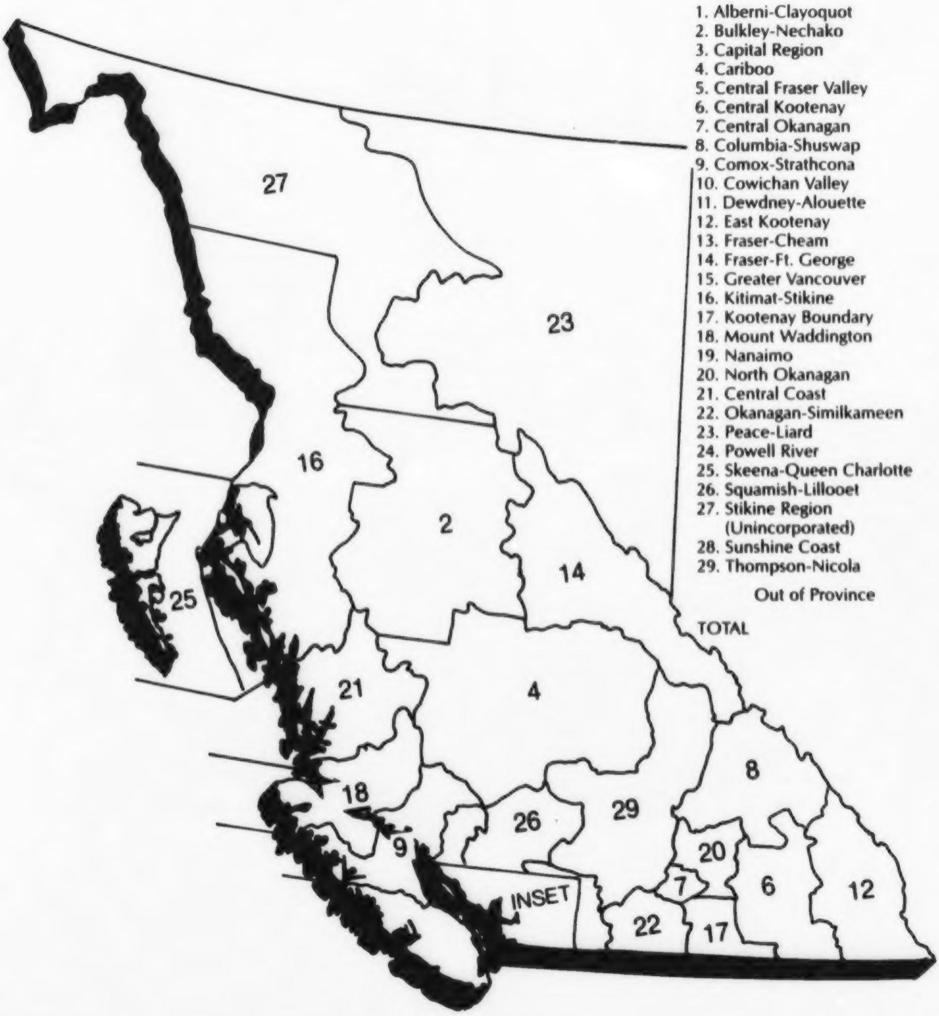


TABLE 2

Percentage of Complaints Closed by Regional District as of December 31, 1988

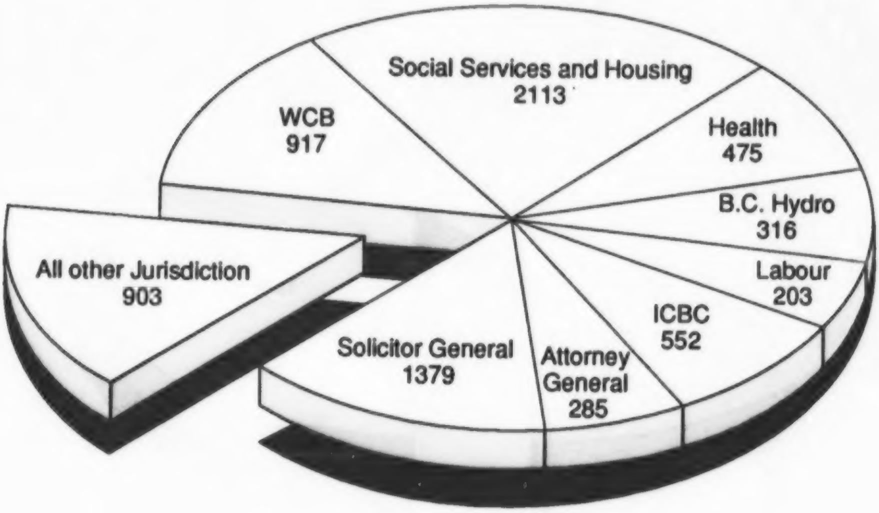


Regional Districts	Percentage of population 1981	Percentage of complaints 1988
1. Alberni-Clayoquot	1.2	1.0
2. Bulkley-Nechako	1.4	7.2
3. Capital Region	9.1	6.5
4. Cariboo	2.2	2.5
5. Central Fraser Valley	4.2	2.6
6. Central Kootenay	1.9	2.6
7. Central Okanagan	3.1	2.6
8. Columbia-Shuswap	1.5	1.3
9. Comox-Strathcona	2.5	2.1
10. Cowichan Valley	1.9	1.1
11. Dewdney-Alouette	2.2	4.4
12. East Kootenay	2.0	1.9
13. Fraser-Cheam	2.0	0.9
14. Fraser-Ft. George	3.3	5.7
15. Greater Vancouver	42.6	35.8
16. Kitimat-Stikine	1.5	1.4
17. Kootenay Boundary	1.2	0.8
18. Mount Waddington	0.5	0.3
19. Nanaimo	2.8	3.8
20. North Okanagan	2.0	2.5
21. Central Coast	0.1	0.1
22. Okanagan-Similkameen	2.1	2.2
23. Peace-Liard	2.0	2.8
24. Powell River	0.7	0.3
25. Skeena-Queen Charlotte	0.9	0.4
26. Squamish-Lillooet	0.7	0.4
27. Stikine Region (Unincorporated)	0.1	0.1
28. Sunshine Coast	0.6	0.8
29. Thompson-Nicola	3.7	4.7
Out of Province		1.2
TOTAL	100.0	100.0

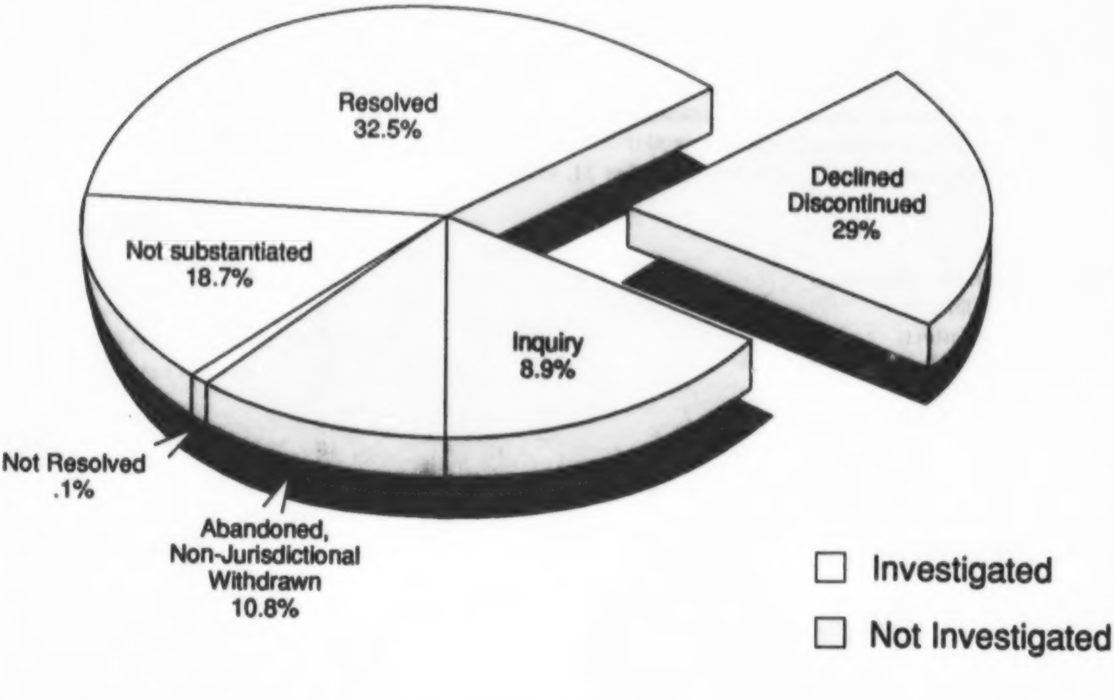
TABLE 3
Disposition of Complaints (Proclaimed Authorities)
Closed between January 1988 and December 1988

A. MINISTRIES:	Resolved	Not Resolved	Abandoned, Non-Juris-dictional, Withdrawn	Not Substan-tiated	Declined Discont.	Inquiry	Total
Ministers of State	0	0	0	0	0	0	0
Advanced Ed./Job Trng.	22	0	7	8	10	9	56
Agriculture and Fisheries	0	0	0	2	0	4	6
Attorney General	94	0	41	39	25	86	285
Crown Lands	6	0	4	14	6	0	30
Education	16	0	2	4	0	8	30
Energy, Mines	2	0	2	6	8	2	20
Environment	16	0	11	14	2	4	47
Finance & Corp. Rel.	23	0	9	36	4	15	87
Forests	11	0	13	13	24	4	65
Government Mgmt. Serv.	2	0	0	0	4	0	6
Health	166	0	40	108	107	54	475
Inter. Bus. & Imm.	0	0	0	0	0	0	0
Labour & Consumer Serv.	44	0	15	34	89	21	203
Mun. Aff. Rec. & Cult.	4	0	2	8	5	2	21
Native Affairs	0	0	0	0	2	0	2
Parks	2	0	2	2	0	0	6
Regional Development	4	0	0	0	0	0	4
Social Serv. & Housing	1019	2	325	402	180	185	2113
Solicitor General	424	0	111	411	394	39	1379
Tourism & Prov. Sec	0	0	0	0	0	0	0
Tr. & Highways	26	0	12	16	16	15	85
SUB-TOTAL A	1881	2	596	1117	876	448	4920
Percent	26.3	.1	8.4	15.6	12.3	6.3	69
BOARDS, COMMISSIONS:							
Agricultural Land Comm	0	0	0	3	0	1	4
B.C. Assessment	2	0	0	10	18	6	36
B.C. Board of Parole	3	0	1	9	6	1	20
B.C.B.C.	0	0	2	0	0	0	2
B.C. Coun. Hum. Rgts	0	0	2	4	2	0	8
B.C.D.C.	0	0	0	0	2	0	2
B.C. Ferry Corp	4	0	2	2	2	0	10
B.C.H.M.C.	10	0	4	18	2	1	35
B.C. Hydro	57	0	19	50	176	14	316
B.C. Systems	0	0	0	0	2	0	2
B.C. Railway	2	0	1	0	5	1	9
B.C. Steamships	0	0	0	0	0	0	0
B.C. Transit	6	0	2	2	10	1	21
Colleges	0	0	2	4	0	4	10
Criminal Injuries	0	0	0	0	0	0	0
Environment App. Bd.	0	0	0	0	0	0	0
EXPO	0	0	0	0	1	0	1
Hospital Boards	8	0	2	0	8	6	24
I.C.B.C.	142	0	61	52	263	34	552
Industrial Rel. Board	1	0	3	3	3	2	12
Motor Carrier Comm.	1	0	6	2	18	1	30
Municipal Police Brds.	4	0	0	0	4	3	9
W.C.B.	157	1	54	27	577	101	917
Boards of Review	12	0	3	4	66	6	91
Others	34	0	11	30	27	10	112
SUBTOTAL B	443	1	175	220	1192	192	2223
Percent	19.9	.1	7.9	9.9	53.6	8.6	31
TOTALS A + B	2324	3	771	1337	2068	640	7143
Percent	32.5	.1	10.8	18.7	29	8.9	100

Disposition of Complaints Proclaimed Authorities, 1988



Total: 7143 Complaints



Full Investigation - 3664

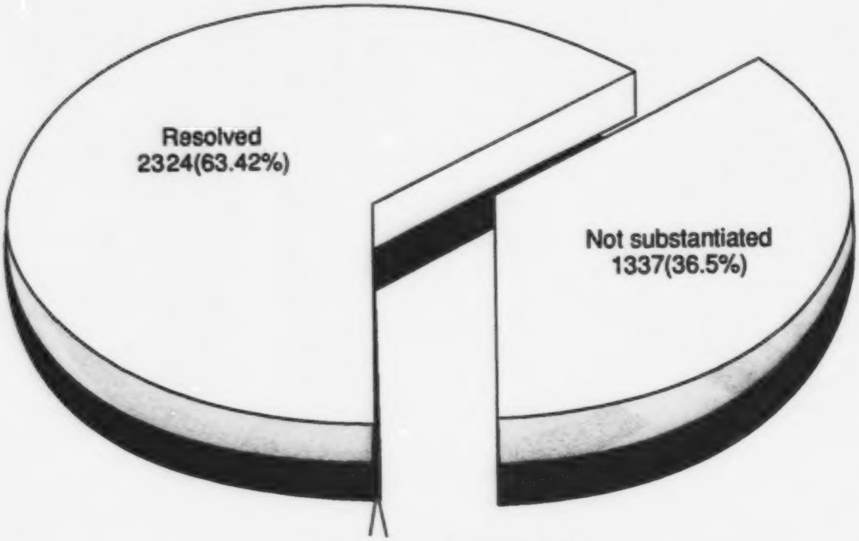


TABLE 4

Complaints Against Unproclaimed Authorities
(Sections 3-11, Schedule of Ombudsman Act)
Closed between January 1, 1988 and December 31, 1988

	Total
Government Corporations	261
Municipalities	159
Regional Districts	24
Public Schools	26
Universities	3
Colleges and Prov. Institutes	6
Hospital Boards	18
Professional/Occupational Assoc.	26
Islands Trust	3
TOTAL	526

TABLE 5

Non-Jurisdictional Complaints
Closed between January 1, 1988 and December 31, 1988

	Total
Federal, other provincial territorial and foreign governments	491
Marketplace matters - requests for personal assistance	4094
Professional actions	164
Legal and court matters	621
Police matters	190
Statutory boards	13
Miscellaneous	462
TOTAL	6035

TABLE 6

Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
1. Inquiries		754	18.4
2. Abandoned by Complainant		310	8.9
3. Withdrawn by Complainant		408	11.7
4. Not an Authority		21	.6
5. Not a matter of Administration		46	1.3
6. Does not aggrieve a person			
7. Appeal to Tribunal		346	9.9
8. Solicitor for an Authority			
Discontinued by Ombudsman		1708	49.1
(9) Over one year old	6		
(10) Insufficient personal interest	7		
(11) Available remedy	1087		
(12) Frivolous/Vexatious	0		
(13) Can Consider w/o Investigations	202		
(14) Not beneficial to complainant	324		
(15) Cost exceeds benefit	0		
(16) Evidence not available	82		
17. Not Resolved		3	.1
TOTAL		3482	100.0

TABLE 7

Level of Impact

Resolved (Jurisdictional) Complaints Closed between January and December 1988

	Individual Only	Practice	Procedure	Regulation	Statute	Total
Resolved Complaints	2197	86	36	1	4	2324

TABLE 8

List of Reports

Year	Cabinet Reports (Section 24)	Special Reports (to the Legislature) (Section 2)	Public Reports (Section 30(2))
1981	4	3	1
1982	1	2	1
1983	3	3	0
1984	5	7	1
1985	13	7	1
1986	2	0	0
1987	2	0	5
1988	0	0	6
TOTALS	30	22	15

TABLE 9

Number of Complaints/Inquiries Closed For Selected Ministries, Boards, Commissions, etc.

	1982	1983	1984	1985	1986	1987	1988
Social Service & Housing	599	984	1,369	1,820	1,603	1,809	2,113
ICBC	791	810	499	424	405	515	552
Workers' Compensation	440	482	641	737	773	929	917
Attorney General	419	428	988	831	997	1,345	1,394
Transportation/Highways	220	263	285	249	163	245	84
Health	163	209	301	569	451	280	475
B.C. Hydro and Power	135	159	212	365	321	237	316

TABLE 10

Closed Complaints by Jurisdiction and Year

Year	Total Complaints Closed	Number Outside Jurisdiction	Number Within Jurisdiction	Percent Within Jurisdiction
1979-80	4,197	2,309	1,888	44.9
1981	4,765	2,008	2,757	57.8
1982	7,979	3,851	4,128	51.7
1983	9,762	5,156	4,606	47.2
1984	11,343	5,636	5,707	50.3
1985	12,018	6,184	5,834	48.5
1986	11,185	5,746	5,439	48.6
1987	12,406	6,127	6,279	50.6
1988	13,704	6,561	7,143	52.1

TABLE 11

Disposition of Jurisdictional Complaints 1979-88: Numbers of Complaints Closed

	79-80	1981	1982	1983	1984	1985	1986	1987	1988
Not resolved	0	74	18	20	51	29	25	8	3
Resolved/Rectified	565	781	1,304	1,556	2,053	2,267	1,833	2,231	2,324
Not substantiated	459	682	880	1,123	1,264	1,245	1,178	1,332	1,337
Discontinued	864	1,220	1,926	1,907	2,339	2,293	1,936	1,954	2,839
Inquiries							467	754	640
TOTAL	1,888	2,757	4,128	4,606	5,707	5,834	5,439	6,279	7,143

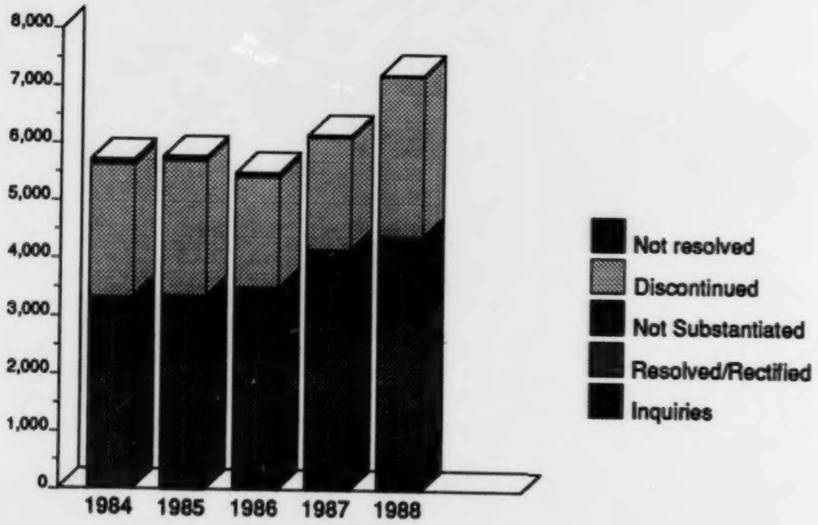

Disposition of Jurisdictional Complaints 1984-88: Numbers of Complaints Closed

TABLE 12

Disposition of Jurisdictional Complaints 1979-88: Percentages

	79/80	1981	1982	1983	1984	1985	1986	1987	1988
Not Resolved	0	3	1	1	1	1	.4	.1	.1
Resolved/rectified	30	29	31	34	36	39	33.6	35.6	32.5
Not substantiated	24	25	21	24	22	21	22.0	21.2	18.7
Discontinued	46	44	47	41	41	39	36.0	31.1	39.7
Inquiries							8.0	12.0	9.0

TABLE 13

Complaints/Inquiries Received and Closed

Year	New Complaints Received	Percent Increase/Decrease Over Previous Year	Complaints Closed	Percent Increase/Decrease Over Previous Year
1979	924		256	
1980	3,840		3,941	
1981	4,935	28.5	4,765	20.9
1982	8,179	65.7	7,979	67.5
1983	9,534	16.6	9,762	22.3
1984	11,462	20.2	11,343	16.2
1985	11,308	-1.3	12,018	5.9
1986	11,012	-2.6	11,185	-6.9
1987	12,712	15.4	12,406	10.9
1988	14,184	8.9	13,704	9.0
79-88	88,090		87,359	

New Complaints Received, 1979-88

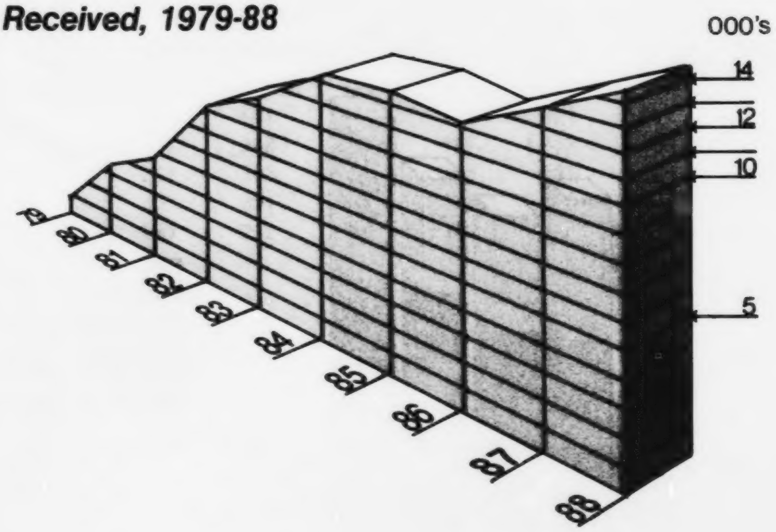


TABLE 14

1988 Complaint/Inquiry Load

1979-1987 complaints carried into 1988	986
New complaints received in 1988	14,184
Total active complaints in 1988	15,170
Complaints closed in 1988	13,704
Complaints still under investigation at year ending December 31, 1988	1,466

Staff as at December 31, 1988

Amren, R.W. Bergen
Anderson, Patricia (Pat)
Arnold, Elizabeth
Berry, Susan P.
Beyer L. Eleonore
Bohlin, Ronald H.
Britneff, Elizabeth (Libby)
Brown, Cleta
Cameron, David A.
Davis, David
Dennison, Sid
Diersch, Eileen
Desilets, Helene
Dixon, Lorrainne A. (LOA)
Forth, Angela B.
Gardiner, Thomas (Scotty) M.
Greer, David
Hadley, Sonja E.
Hallam, Karen M.
Hayward, Dorothy
Henders, Keith C.
Heyman, Susan L.
Humphreys, Barbara G.
Illington, Joy
Jones, Eric
Kembel, Joanne L.
Kemeny, Carol
Labrick, Elisabeth
Madison, Christine
Owen, Stephen
Parfitt, D. Brent
Phillips, R. Delmar (Del)
Ross, Michael
Schaufele, Irita
Skeldon, Dorothy
Skinner, Michael T.
Smalley, Leora D.
Smillie, Jenny
Spangelo, Cindy
Staples, David
Summersgill, William (Bill) M.
Tweddle, Rita
Williams, Holly E.

Part IV

The Ombudsman Act

OMBUDSMAN ACT

[Ss. 3 to 11 of Schedule not in force; see *s. 35]*

CHAPTER 306

Interpretation

1. In this Act "authority" means an authority set out in the Schedule and includes members and employees of the authority.

1977-58-1.

Appointment of Ombudsman

2. (1) The Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to him under this Act.

(2) The Legislative Assembly shall not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

1977-58-2(1,2).

Term of office

3. (1) The Ombudsman shall be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsman shall not hold another office or engage in other employment.

1977-58-2(3,4).

Remuneration

4. (1) The Ombudsman shall be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia.

(1.1) The Ombudsman holding office when this subsection comes into force shall, during the remainder of his current term of office, be paid the greater of

(a) the salary he is actually receiving on December 1, 1987, or
(b) the salary prescribed in subsection (1).

(2) The Ombudsman shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred by him in discharging his duties.

1977-58-2(5,6); 1987-60-20.

Pension

5. (1) Subject to this section, the *Pension (Public Service) Act* applies to the Ombudsman.

(2) An Ombudsman who retires, is retired or removed from office after at least 10 years' service shall be granted an annual pension payable on or after attaining age 60.

(3) Where an Ombudsman who has served at least 5 years is removed from office due to physical or mental disability, section 19 of the *Pension (Public Service) Act* applies and he is entitled to a superannuation allowance commencing the first day of the month following his removal.

(4) Where an Ombudsman who has served at least 5 years dies in office, section 20 of the *Pension (Public Service) Act* applies and the surviving spouse is entitled to a superannuation allowance commencing the first day of the month following the death.

(5) Where calculating the amount of a superannuation allowance under this section
(a) each year of service as Ombudsman shall be counted as 1 1/2 years of pensionable service.
(b) [Repealed 1988-52-2.]

(6) Subsection (5) does not apply to the calculation under section 6 (5) of the *Pension (Public Service) Act*.

1977-58-2(7 to 11); 1985-14-4; 1988-52-2.

Resignation, removal or suspension

6. (1) The Ombudsman may at any time resign his office by written notice to the Speaker of the Legislative Assembly or to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from the Province.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor shall, in accordance with the recommendation,
(a) suspend the Ombudsman, with or without salary; or
(b) remove the Ombudsman from his office.

(3) Where
(a) the Ombudsman is suspended or removed;
(b) the office of Ombudsman becomes vacant for a reason other than by operation of paragraph (f); or
(c) the Ombudsman is temporarily ill or temporarily absent for another reason

the Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint an acting Ombudsman to hold office until
(d) the appointment of a new Ombudsman under section 2;
(e) the end of the period of suspension of the Ombudsman;
(f) the expiry of 30 sitting days after the commencement of the next session of the Legislature; or
(g) the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

(4) When the Legislature is not sitting and is not ordered to sit within the next 5 days the Lieutenant Governor in Council may suspend the Ombudsman from his office, with or without salary, for cause or incapacity, but the suspension shall not continue in force after the expiry of 30 sitting days.

1977-58-3.

Lieutenant Governor in Council may appoint acting Ombudsman

7. (1) Where
(a) the Ombudsman is suspended or removed; or
(b) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but no recommendation under section 2 or 6 (3) is made by the Legislative Assembly before the end of that sitting or before an adjournment of the Legislature exceeding 5 days, or
(c) the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days; or

(d) the Ombudsman is temporarily ill or temporarily absent for another reason,

the Lieutenant Governor in Council may appoint an acting Ombudsman.

(2) The appointment of an acting Ombudsman under subsection (1) terminates

(a) on the appointment of a new Ombudsman under section 2;
(b) at the end of the period of suspension of the Ombudsman;
(c) immediately after the expiry of 30 sitting days after the day on which he was appointed;
(d) on the appointment of an acting Ombudsman under section 6 (3); or
(e) on the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

1977-58-4.

Staff

8. (1) The Ombudsman may, in accordance with the *Public Sevice Act*, appoint employees necessary to enable him to perform his duties.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsman shall be deemed to be a deputy minister.

(3) [Repealed 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).]

(4) The Ombudsman may make a special report to the Legislative Assembly where he believes the

(a) amounts and establishment provided for the office of the Ombudsman in the Estimates; or
(b) services provided to him by the Government Personnel Services Division

are inadequate to enable him to fulfil his duties.

1977-58-5; 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).

Confidentiality

9. (1) Before beginning to perform his duties, the Ombudsman shall take an oath before the Clerk of the Legislative Assembly that he will faithfully and impartially exercise the powers and perform the duties of his office, and that he will not, except where permitted by this Act, divulge any information received by him under this Act.

(2) A person on the staff of the Ombudsman shall, before he begins to perform his duties, take an oath before the Ombudsman that he will not, except where permitted by this Act, divulge any information received by him under this Act, and for the purposes of this subsection the Ombudsman is a commissioner for taking affidavits for British Columbia.

(3) The Ombudsman and every person on his staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

(4) Neither the Ombudsman nor a person holding an office or appointment under the Ombudsman shall give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of his duties under this Act, except to enforce his powers of investigation, compliance with this Act or with respect to a trial of a person for perjury.

(5) An investigation under this Act shall be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(6) Notwithstanding this section, the Ombudsman may disclose or authorize a member of his staff to disclose a matter that, in his opinion, is necessary to

(a) further an investigation;
(b) prosecute an offence under this Act; or
(c) establish grounds for his conclusions and recommendations made in a report under this Act.

1977-58-6.

Powers and duties of Ombudsman in matters of administration

10. (1) The Ombudsman, with respect to a matter of administration, on a complaint or on his own initiative, may investigate

(a) a decision or recommendation made;
(b) an act done or omitted; or
(c) a procedure used

by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that

(a) a decision, recommendation or act is final;
(b) no appeal lies in respect of it; or
(c) no proceeding or decision of the authority whose decision, recommendation or act it is shall be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall

(a) subject to any special directions, investigate the matter referred so far as it is within his jurisdiction; and
(b) report back as he thinks fit, but sections 22 to 25 do not apply in respect of an investigation or report made under this subsection.

1977-58-7.

Jurisdiction of Ombudsman

11. (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired; or
(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsman may investigate conduct occurring prior to the commencement of this Act.

(3) Where a question arises as to the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, he may apply to the Supreme Court for a declaratory order determining the question.

1977-58-8.

Complaint to Ombudsman

12. (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint shall be in writing.

(3) Notwithstanding any enactment, where a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman, it shall be mailed or forwarded immediately, unopened, to the Ombudsman by the person in charge of the institution, hospital or facility in which the writer is confined or by the person having custody of the person; and a communication from the Ombudsman to such a person shall be forwarded to that person in a like manner.

1977-58-9.

Refusal to investigate

13. The Ombudsman may refuse to investigate or cease investigating a complaint where in his opinion

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which his complaint refers more than one year before the complaint was received by the Ombudsman;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and if the person aggrieved has not availed himself of the remedy, there is no reasonable justification for his failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint; or

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved.

1977-58-10.

Ombudsman to notify authority

14. (1) If the Ombudsman investigates a matter, he shall notify the authority affected and any other person he considers appropriate to notify in the circumstances.

(2) The Ombudsman may at any time during or after an investigation consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) Where before the Ombudsman has made his decision respecting a matter being investigated he receives a request for consultation from the authority, he shall consult with the authority.

1977-58-11.

Power to obtain information

15. (1) The Ombudsman may receive and obtain information from the persons and in the manner he considers appropriate, and in his discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsman may

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, converse in private with any person there and otherwise investigate matters within his jurisdiction;
(b) require a person to furnish information or produce a document or thing in his possession or control that relates to an investigation at a time and place he specifies, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;
(c) make copies of information furnished or a document or thing produced under this section;
(d) summon before him and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath; and
(e) receive and accept, on oath or otherwise, evidence he considers appropriate, whether or not it would be admissible in a court.

(3) Where the Ombudsman obtains a document or thing under subsection (2) and the authority requests its return, the Ombudsman shall within 48 hours after receiving the request return it to the authority, but he may again require its production in accordance with this section.

1977-58-12.

Opportunity to make representations

16. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter.

1977-58-13.

Executive Council proceedings

17. Where the Attorney General certifies that the entry on premises, the giving of information, the answering of a question or the production of a document or thing might

(a) interfere with or impede the investigation or detection of an offence;
(b) result in or involve the disclosure of deliberations of the Executive Council; or
(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest.

the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in his next annual report.

1977-58-14.

Application of other laws respecting disclosure

18. (1) Subject to section 17, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 17 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter shall not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 17 but notwithstanding subsection (2), where a person is bound to maintain confidentiality in respect of a matter only by virtue of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), he shall disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 17, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person shall, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

1977-58-15.

Privileged information

19. (1) Subject to section 18, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as that person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

1977-58-16.

Witness and information expenses

20. (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if he were a witness in the Supreme Court.

(2) Where a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may in his discretion reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

1977-58-17.

Where complaint not substantiated

21. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that the complaint has not been substantiated, he shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

1977-58-18.

Procedure after investigation

22. (1) Where, after completing an investigation, the Ombudsman believes that

- (a) a decision, recommendation, act or omission that was the subject matter of the investigation was
  - (i) contrary to law;
  - (ii) unjust, oppressive or improperly discriminatory;
  - (iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;
  - (iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;
  - (v) related to the application of arbitrary, unreasonable or unfair procedures; or
  - (vi) otherwise wrong;
- (b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority
  - (i) did so for an improper purpose;
  - (ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or
  - (iii) was negligent or acted improperly; or
- (c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.

(2) Without restricting subsection (1), the Ombudsman may recommend that

- (a) a matter be referred to the appropriate authority for further consideration;
- (b) an act be remedied;
- (c) an omission or delay be rectified;
- (d) a decision or recommendation be cancelled or varied;
- (e) reasons be given;
- (f) a practice, procedure or course of conduct be altered;
- (g) an enactment or other rule of law be reconsidered; or
- (h) any other steps be taken.

1977-58-19.

Authority to notify Ombudsman of steps taken

23. (1) Where the Ombudsman makes a recommendation under section 22, he may request that the authority notify him within a specified time of the steps that have been or are proposed to be taken to give effect to his recommendation, or if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) Where, after considering a response made by an authority under subsection (1) the Ombudsman believes it advisable to modify or further modify his

recommendation, he shall notify the authority of his recommendation as modified and may request that the authority notify him of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.
1977-58-20.

Report of Ombudsman where no suitable action taken

24. (1) If within a reasonable time after a request by the Ombudsman has been made under section 23 no action is taken that the Ombudsman believes adequate or appropriate, he may, after considering any reasons given by the authority, submit a report of the matter to the Lieutenant Governor in Council and, after that, may make such report to the Legislative Assembly respecting the matter as he considers appropriate.

(2) The Ombudsman shall attach to a report under subsection (1) a copy of his recommendation and any response made to him under section 23, but he shall delete from his recommendation and from the response any material that would unreasonably invade any person's privacy, and may in his discretion delete material revealing the identity of a member, officer or employee of an authority.
1977-58-21.

Complainant to be informed

25. (1) Where the Ombudsman makes a recommendation pursuant to section 22 or 23 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, he shall inform the complainant of his recommendation and make such additional comments as he considers appropriate.

(2) The Ombudsman shall in every case inform the complainant within a reasonable time of the result of the investigation.
1977-58-22.

No hearing as of right

26. Except as provided in this Act, a person is not entitled as of right to a hearing before the Ombudsman.
1977-58-23.

Ombudsman not subject to review

27. Proceedings of the Ombudsman shall not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.
1977-58-24.

Proceedings privileged

28. (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything he may in good faith do, report or say in the course of the exercise or purported exercise of his duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the

Ombudsman under this Act are privileged to the same extent as if the inquiry or proceedings were proceedings in a court; and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

1977-58-25.

Delegation of powers

29. (1) The Ombudsman may in writing delegate to any person or class of persons any of his powers or duties under this Act, except the power

(a) of delegation under this section;
(b) to make a report under this Act; and
(c) to require a production or disclosure under section 18 (1).

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the Ombudsman of a power so delegated.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) Where the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1977-58-26.

Annual and special reports

30. (1) The Ombudsman shall report annually on the affairs of his office to the Speaker of the Legislative Assembly, who shall cause the report to be laid before the Legislative Assembly as soon as possible.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of a person or authority, may make a special report to the Legislative Assembly or comment publicly respecting a matter relating generally to the exercise of his duties under this Act or to a particular case investigated by him.

1977-58-27.

Offences

31. A person commits an offence who,

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of his power or duties under this Act;
(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;
(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of his powers or duties under this Act; or
(d) violates an oath taken under this Act.

1977-58-28.

Other remedies

32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy or right of appeal or objection is provided; or

(b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.

1977-58-29.

Rules

33. (1) The Legislative Assembly may on its own initiative or on the recommendation of the Lieutenant Governor in Council make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of his duties imposed by this Act.

1977-58-30.

Additions to Schedule

34. The Lieutenant Governor in Council may by order add authorities to the Schedule.

1977-58-31.

Commencement

35. Sections 3 to 11 of the Schedule come into force by regulation of the Lieutenant Governor in Council.

1977-58-34; 1983-10-25, effective October 26, 1983 (B.C. Reg. 393/83).

SCHEDULE

AUTHORITIES

1. Ministries of the Province.

2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council;

(b) in the discharge of their duties, public officers or servants of the Province; or

(c) responsible to the Province.

[3. A corporation the ownership of which or a majority of the shares of which is vested in the Province.

4. Municipalities.

5. Regional districts.

6. The Islands Trust established under the *Islands Trust Act*.

7. Public schools, colleges and boards of school trustees as defined in the *School Act* and college councils established under that Act.

8. Universities as defined in the *University Act*.

9. Institutions as defined in the *College and Institute Act*.

10. Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

11. Governing bodies of professional and occupational associations that are established or continued by an Act.]

1977-58-Sch.; *[bracketed sections 3 to 11 to be proclaimed]*; 1983-3-34, effective December 22, 1983 (B.C. Reg. 486/83); 1987-48-14.